

1 **Texas Board of Occupational Therapy Examiners**
2 **BOARD MEETING MINUTES**
3 November 3, 2017
4 333 Guadalupe, Suite #2-510
5 Austin, TX 78701
6 8:30 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 Jennifer B. Clark, COTA
12 Sally Harris King, COTA
13 Pamela D. Nelon, Public Member
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15 **Members Absent:** Amanda Jean Ellis, Public Member
16 William N. Hale, Public Member
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18 **Counsel Present:** Kara Holsinger, Assistant Attorney General
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20 **Staff Present:** John Maline, Executive Director
21 Mark Turek, Chief Investigator
22 Michael Briscoe, Licensing Manager
23 Lea Weiss, OT Coordinator
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25 **Public Attendees:** Anthony Alyiar, OTA Student
26 Jeremy Burke, OTA Student
27 Corinne Cole, OTA Student
28 Veronica Franco, OTA Student
29 Judith Joseph, TOTA Executive Director
30 Imelda Mendiola, OTA Student
31 Charlie Nguyen, OTA Student
32 Jennifer Nguyen, OTA Student
33 Joslyn Rivera, OTA Student
34 Denise Rose, TOTA Legislative Advisor
35 Evaristo Terrones, OTA Student
36

37 **1. Call to Order**

38 The meeting was called to order at 8:34 AM by Stephanie Johnston, Presiding Officer. She
39 called the roll and announced that a quorum existed. Stephanie Johnston also noted Sally
40 Harris's recent name change to Sally Harris King.
41

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

43 **Motion:** To approve the excuse of Amanda Jean Ellis and of William N.
44 Hale for their absence at the November 3, 2017 Board meeting

45 **Made by:** DeLana Honaker

46 **Second by:** Todd Novosad

47 **Motion passed.**
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49 **3. Board member training regarding antitrust liability for licensing boards**

50 Kara Holsinger, in accordance with a requirement of SB 317 from the 85th Regular Legislative
51 Session, presented a class to the Board members on the Board's responsibility regarding its
52 understanding of potential antitrust liabilities and the steps it must take to minimize its
53 vulnerability to same.

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4. Public comment

Judith Joseph commented on communication TOTA had received from licensees concerning recovery from Hurricane Harvey and inquired into the Board's response regarding such. Lea Weiss noted that such would be addressed during agenda item 12.

5. Approval of Minutes of August 18, 2017

Motion: To approve the minutes as written

Made by: Sally Harris King

Second by: DeLana Honaker

Motion passed.

6. Discussion and possible action on the Executive Director's Report concerning fiscal and budgetary matters, performance measures, ongoing projects, agency personnel matters, Executive Council activity, the recent Sunset Review and legislative session, policies pursuant to SB 317 from the 85th Regular Legislative Session, and other agency business

John Maline briefed the Board on fiscal and budgetary matters, performance measures, ongoing projects, agency personnel matters, Executive Council activity, and issues relevant to agency business. He also discussed the recent Sunset Review and bills from the legislative session, including those with a possible impact on the Board. John Maline, in addition, reviewed policies that separate the policy making responsibilities of the Board and Executive Council and the management responsibilities of the Executive Director and staff, and policies regarding negotiated rulemaking and alternative dispute resolution, as required by changes to the Board's and Executive Council's Acts pursuant to SB 317 from the 85th Regular Legislative Session. He noted, furthermore, that he has been in contact and had conversations with the staff of the Governor's Appointments Office, but that as of his report, no new appointments or reappointments to the Board had been made. The Board discussed the agenda item. No action was taken.

7. Investigation Committee Report

A. Review and possible action on Agreed Orders for Case #s: 17-213; 17-229; 17-230; 17-236; and 18-019

Mark Turek presented agreed orders for the following case numbers: 18-019; 17-229; 17-230; 17-236; and 17-213.

The Board reviewed and ratified the agreed orders for case numbers: 18-019; 17-229; 17-230; 17-236; and 17-213.

B. Discussion and possible action on the Investigation Committee meeting of October 19, 2017

Mark Turek reported that fifty four cases were reviewed at the October 19, 2017 meeting, resulting in the Investigation Committee's issuance of five Agreed Orders. No informal conferences were held.

C. Discussion and possible action on investigative activities to date

Mark Turek reported on performance measures and on-site investigations since the last Board meeting, in addition to continued work on a schedule of sanctions to include administrative penalties, which will be presented to the Board at a future meeting. He also reported on continuing work regarding implementing fingerprint-based criminal history background checks of applicants and licensees.

106 **8. Executive Session pursuant to §551.074 of the Government Code regarding the**
107 **appointment, employment, evaluation, reassignment, duties, discipline, or**
108 **dismissal of the Executive Director of the Executive Council of Physical Therapy**
109 **and Occupational Therapy Examiners**

110 The Board went into closed session at 9:55 AM. The Board returned to open session at 10:07
111 AM. No action was taken.

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113 The Board recessed at 10:07 AM and reconvened at 10:25 AM.

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115 **9. Rules Committee Report**
116 **Discussion and possible action on recommendations from the Rules Committee**
117 **including the following items:**

118 **A. Discussion and possible action on SB 1107 from the 85th Regular**
119 **Legislative session and proposing a new rule regarding telehealth and rule**
120 **amendments, including amendments regarding telehealth, to the following**
121 **rules:**

122 **1. Chapter 362, Definitions**

123 **2. §372.1, Provision of Services**

124 **3. §373.1, Supervision of Non-Licensed Personnel**

125 DeLana Honaker delivered the Rules Committee Report and noted the following:

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127 The Rules Committee discussed recommending to the Board amendments to §362.1,
128 Definitions, to cleanup and clarify the section and to revise the Board's definition of telehealth.

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130 Cleanups and clarifications would pertain to amending a reference to the Occupational Therapy
131 Practice Act under the definition of examination and to adding to the definition of jurisprudence
132 examination that such is an online examination and that the passing score is at least seventy
133 percent.

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135 The Rules Committee also recommended revisions to the definition of telehealth to more closely
136 align it with the current definition of telehealth service in Occupations Code, §111.001,
137 Definitions, as amended by SB 1107 from the 85th Regular Legislative Session.

138

139 The Rules Committee, in addition, recommended the following amendments to the Board to
140 cleanup and clarify §372.1, Provision of Services, in general and to revise and clarify the
141 section's regulations regarding occupational therapy services provided via telehealth and
142 modifications to the plan of care.

143

144 The recommended amendments would remove the requirement that the initial evaluation for a
145 medical condition must be conducted in person and may not be conducted via telehealth. New
146 language instead would include that the occupational therapist is responsible for determining
147 whether any aspect of the evaluation may be conducted via telehealth or must be conducted in
148 person. The suggested amendments would also remove current language that the occupational
149 therapist must have real time interaction with the client during the evaluation process either in
150 person or via telehealth to instead include that the occupational therapist must have contact with
151 the client during the evaluation via telehealth using synchronous audiovisual technology or in
152 person. The changes would also add that other telecommunications or information technology
153 may be used to aid in the evaluation but may not be the primary means of contact or
154 communication. The amendments, in addition, would remove that the occupational therapy
155 practitioners must have real time interaction with the client during the intervention process either

156 in person or via telehealth and instead would include that the occupational therapy practitioners
157 must have contact with the client during the intervention session via telehealth using
158 synchronous audiovisual technology or in person. The amendments would add, as well, that
159 other telecommunications or information technology may be used to aid in the intervention
160 session but may not be the primary means of contact or communication. The amendments
161 would, additionally, include that except where otherwise restricted by rule, the occupational
162 therapy practitioner is responsible for determining whether any aspect of the intervention
163 session may be conducted via telehealth or must be conducted in person. Concurrent with
164 these changes, the provision requiring that the occupational therapist is responsible for
165 determining whether any aspect of the provision of services may be conducted via telehealth or
166 must be conducted in person would be removed from the section.

167
168 The recommended amendments to §372.1 would also remove language that the occupational
169 therapist and an occupational therapy assistant may work jointly to revise the short-term goals,
170 but the final determination resides with the occupational therapist and that revisions to the plan
171 of care and goals must be documented by the occupational therapist and/or occupational
172 therapy assistant to reflect revisions at the time of the change. The amendment would add
173 instead that modifications to the plan of care must be documented.

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175 The amendments would include further cleanups and clarifications including adding the phrase
176 “discontinuation of occupational therapy services” under applicable provisions regarding a
177 discharge.

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179 DeLana Honaker noted that the Rules Committee did not discuss suggesting changes to
180 §373.1, Supervision of Non-Licensed Personnel.

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182 The Board discussed the possible rule changes.

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184 **Motion: To propose and publish the amendments to §362.1, Definitions, and §372.1,**
185 **Provision of Services**

186 **Made by: Rules Committee**

187 **Second by: None required.**

188 **Motion passed.**

189
190 **B. Discussion and possible action on SB 317 from the 85th Regular**
191 **Legislative session and proposing new rules concerning negotiated**
192 **rulemaking and alternative dispute resolution**

193 DeLana Honaker noted that the Rules Committee had discussed recommending to the Board
194 the proposal of new rules §363.3, concerning negotiated rulemaking, and §363.4, concerning
195 alternative dispute resolution. The new rules would be proposed in order to comply with
196 statutory amendments to §454.108 of the Occupational Therapy Practice Act regarding
197 establishing a policy on Negotiated Rulemaking and Alternative Dispute Resolution.

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199 The Board discussed the possible rule changes.

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201 **Motion: To propose and publish new rules §363.3, Negotiated Rulemaking,**
202 **and §363.4, Alternative Dispute Resolution**

203 **Made by: Rules Committee**
204 **Second by: None required.**
205 **Motion passed.**

206
207 **C. Discussion and possible action on questions received by the Texas Board**
208 **of Occupational Therapy Examiners related to the OT Practice Act and**
209 **Board Rules**

210 DeLana Honaker noted that there were no questions discussed and no action was taken.

211

212 **10. Education Committee Report**
213 **Discussion and possible action on recommendations from the Education**
214 **Committee including the following items:**

215 **A. Discussion and possible action on proposing changes to Chapter 367,**
216 **Continuing Education, of the OT Rules concerning acceptable and**
217 **unacceptable continuing education, academic courses, continuing**
218 **education documentation requirements, and establishing a process for**
219 **selecting a license holder peer organization in this state to evaluate and**
220 **approve continuing education courses as required by SB 317 from the 85th**
221 **Regular Legislative Session**

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

223

224 The Education Committee discussed suggesting a proposed amendment to the Board to
225 §367.2, Categories of Education, and a proposed new rule, §367.4, Process for Selecting a
226 Peer Organization to Evaluate and Approve Continuing Education Courses. The amendment
227 would be proposed to clarify, cleanup, and revise §367.2 regarding continuing education
228 requirements. The new rule would establish a process for selecting a peer organization to
229 evaluate and approve continuing education courses as required by recent statutory changes to
230 §454.254(e) of the Occupational Therapy Practice Act.

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232 The proposed amendment to §367.2 would include a cleanup regarding the continuing
233 education documentation for home study courses, educational teleconferences, Internet-based
234 courses, and video instruction to include that such may include a letter of verification. The
235 amendment, furthermore, would clarify the continuing education documentation requirement for
236 presentations by licensees to include that documentation shall include verification of
237 presentation. In the amendment, a reference to documentation for this activity including a
238 brochure or conference guide would be removed. Another revision would be to remove the
239 reference to TBOTE, the Texas Board of Occupational Therapy Examiners, from a provision
240 regarding participation in volunteer activities related to occupational therapy for the purpose of
241 tangible outcomes such as official documents, publications, and official reports.

242

243 Proposed new rule §367.4 would add to the Board Rules that if the Board chooses to authorize
244 a license holder peer organization in Texas to evaluate and approve continuing education
245 courses, the Board will conduct a request for proposals and bid process to select an
246 organization and will request bids and proposals at least once every four years. New rule
247 §367.4 would be proposed pursuant to recent statutory changes to the Occupational Therapy
248 Practice Act §454.254(e) during the 85th Regular Legislative Session.

249

250 The Board discussed the possible rule changes.

251
252 **Motion:** To propose and publish the amendments to §367.2, Categories of
253 Education, and new rule §367.4, Process for Selecting a Peer Organization
254 to Evaluate and Approve Continuing Education Courses
255 **Made by:** Education Committee
256 **Second by:** None required.
257 **Motion passed.**

258
259 **B. Discussion on acceptable and unacceptable continuing education and**
260 **continuing education documentation**
261 Todd Novosad noted that the Education Committee discussed acceptable and unacceptable
262 continuing education activities and CE documentation.

263
264 **C. Discussion and possible action on questions received by the Texas Board**
265 **of Occupational Therapy Examiners related to continuing education**
266 Todd Novosad noted that there were no questions discussed and no action was taken.

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268 **11. Discussion and possible action on practice by OTs and OTAs in non-traditional,**
269 **community, and/or wellness-based roles or settings and the OT Rules including**
270 **Chapter 362, Definitions; Chapter 369, Display of Licenses; Chapter 372, Provision**
271 **of Services; Chapter 373, Supervision; and Chapter 376, Registration of Facilities**
272 The Board discussed practice by OTs and OTAs in non-traditional, community, and wellness-
273 based roles or settings and the OT Rules. The Board discussed returning to this issue at a later
274 Board and/or Rules Committee meeting. No action was taken on the agenda item.

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276 **12. Discussion and possible action on the OT Coordinator's Report. The**
277 **Coordinator's Report may concern any items listed on the agenda and events that**
278 **have occurred between this meeting and the Board's last meeting.**
279 Lea Weiss discussed recent activities at the Board, updates regarding the licensing system
280 database, and information regarding Board licensing statistics. She also discussed the Board's
281 response to Hurricane Harvey including concerning licensees and/or facilities located in
282 counties declared disaster areas. No action was taken on the agenda item.

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284 **13. Discussion and possible action on the Presiding Officer's Report. The Presiding**
285 **Officer's Report may concern any items listed on the agenda and events that have**
286 **occurred between this meeting and the Board's last meeting.**
287 Stephanie Johnston thanked the public for attending. No action was taken on the agenda item.

288
289 **14. Discussion and possible action on scheduling future Board meeting dates and**
290 **agenda items for future consideration**
291 Stephanie Johnston noted that Board meetings have been scheduled for February 2, 2018; May
292 4, 2018; and August 3, 2018, with possible Committee meetings to be held February 1 and 2,
293 2018; May 3 and 4, 2018; and August 2 and 3, 2018. The Board also discussed possible
294 options for a meeting in November 2018.

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296 Stephanie Johnston noted that possible agenda items for upcoming meetings may concern
297 OT Practice Act changes from SB 317 of the 85th Regular Legislative Session and agenda item
298 11.

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300 **15. Adjournment**
301 The Board adjourned at 11:54 AM.

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303 **Minutes adopted on:** February 2, 2018