

1 **Texas Board of Occupational Therapy Examiners**
2 **BOARD MEETING MINUTES**
3 Telephonic Conference Call
4 May 1, 2020
5 9:00 AM
6

7 **Members Present:** Blanca Cardenas, Public Member
8 Jennifer Clark, COTA
9 Karen Gardner, OTR
10 DeLana Honaker, OTR, PhD, CLT, FAOTA, Secretary
11 Eddie Jessie, Public Member
12 Stephanie Johnston, OTR, OTD, FAOTA, Chair
13 Sally Harris King, COTA
14 Todd Novosad, OTR, Vice Chair
15

16 **Members Absent:** None
17

18 **Counsel Present:** Rosalind Hunt, Assistant Attorney General
19

20 **Staff Present:** Amy Carter, Chief Investigator
21 Randall Glines, Staff Services Officer
22 Ralph Harper, Executive Director
23 Karissa Rodriguez, Licensing Manager
24 Lea Weiss, OT Coordinator
25

26 **Public Attendees:** Kate Goodrich, Governmental Affairs Consultant,
27 Jackson Walker, LLP
28 Judith Joseph, OTR, Executive Director,
29 Texas Occupational Therapy Association
30 Kristen Neville, Manager, State Affairs
31 American Occupational Therapy Association
32 Denise Rose, Governmental Affairs Consultant
33 Jackson Walker, LLP
34

35 **The Texas Board of Occupational Therapy Examiners may discuss and/or take action on**
36 **any of the following agenda items. The Board may go into executive session on any**
37 **agenda item listed below as authorized by the Open Meetings Act, Texas Government**
38 **Code, chapter 551.**
39

40 **1. Call to Order**

41 The meeting was called to order at 9:17 AM by Stephanie Johnston, Presiding Officer.
42

43 **2. Roll Call for Members**

44 Stephanie Johnston conducted a roll call for members, who were all in attendance. Stephanie
45 Johnston noted that a quorum existed.
46

47 **3. Roll Call for Public Participants**

48 Stephanie Johnston conducted a roll call for public participants.

49

50 **4. Excusing board member absences**

51 No action taken.

52

53 **5. Public comment**

54 There was no public comment.

55

56 **6. Minutes of February 7, 2020**

57 **Motion: To approve the minutes**

58 **Made by: DeLana Honaker**

59 **Second by: Jennifer Clark**

60 **Motion passed.**

61

62 **7. Executive Director's Report concerning fiscal and budgetary matters, performance**
63 **measures, ongoing projects, agency personnel matters, Executive Council**
64 **activity, recent legislative session, and other agency business**

65 Ralph Harper briefed the Board on fiscal and budgetary matters, performance measures,
66 ongoing projects, agency personnel matters, Executive Council activity, and updates regarding
67 the slated relocation of the agency, along with other state agencies located in the William P.
68 Hobby building, to a new capital area complex in Austin in 2022. In addition, Ralph Harper
69 highlighted the agency's response to COVID-19.

70

71 **8. Investigation Committee Report concerning:**

72 **A. Agreed Orders for case #s: 19-169, 19-206, 20-011, 20-024, 20-028, 20-029,**
73 **20-039, 20-040, 20-069, 20-073, 20-074, 20-081, 20-104, 20-109, 20-110, 20-**
74 **116, 20-137, 20-139, 20-141, 20-157**

75

76 **Motion: To accept agreed orders for case numbers 19-169, 20-039, 20-074 and**
77 **20-137**

78 **Made by: Karen Gardner**

79 **Second by: DeLana Honaker**

80 **Motion passed.**

81

82 **Motion: To accept agreed order for case number 20-104**

83 **Made by: Karen Gardner**

84 **Second by: Eddie Jessie**

85 **Motion passed.**

86

87 **Motion: To accept agreed order for case number 20-157**

88 **Made by: Sally Harris King**

89 **Second by: DeLana Honaker**

90 **Motion passed.**

91

92 **Motion: To accept agreed orders for case numbers 20-028, 20-040, 20-109, 20-110,**
93 **20-116, and 20-141**

94 **Made by: Eddie Jessie**

95 **Second by: Karen Gardner**

96 **Motion passed.**

97

98 **Motion: To accept agreed orders for case numbers 20-073, and 20-139**

99 **Made by: Todd Novosad**

100 **Second by: Blanca Cardenas**

101 **Motion passed.**

102

103 The Board discussed case numbers 19-206 and 20-069. Then, the Board decided to go into
104 closed session to obtain the advice of legal counsel concerning Agenda Item 8, after taking up
105 Agenda Items 8B and 8C in open session.

106

107 **B. Number of cases reviewed, Agreed Orders issued, informal conferences, and**
108 **other investigative matters discussed during the Investigation Committee Meeting**
109 **of April 01, 2020**

110 Amy Carter reported that 100 cases were reviewed at the April 1, 2020 meeting, resulting in the
111 Investigation Committee's issuance of 14 Agreed Orders. No informal conferences were held.

112

113 **C. Performance measures, on-site investigation visits, school presentations, and**
114 **other investigative activities**

115 Amy Carter reported on performance measures, on-site investigations, presentations, and
116 further investigative activities.

117

118 After the conclusion of Agenda Item 8C, the Board recessed at 10:12 AM and reconvened at
119 10:29 AM. A quorum of the board was present.

120

121 The Board returned to Agenda Item 8A after reconvening in open session after the recess.

122

123 **8. Investigation Committee Report concerning:**

124 **A. Agreed Orders for case #s: 19-169, 19-206, 20-011, 20-024, 20-028, 20-029,**
125 **20-039, 20-040, 20-069, 20-073, 20-074, 20-081, 20-104, 20-109, 20-110, 20-**
126 **116, 20-137, 20-139, 20-141, 20-157**

127

128 Stephanie Johnston noted that it was 10:30 AM on May 1, 2020 and that the Board would go
129 into closed session pursuant to Texas Government Code Section 551.071 to obtain the advice
130 of legal counsel under Agenda Item number 8.

131

132 Stephanie Johnston requested that all non-Board members leave the room, with the exception
133 of legal counsel and Amy Carter and Lea Weiss.

134

135 The Board went into closed session at 10:30 AM and returned to open session at 11:20 AM.
136 Upon returning to open session, Stephanie Johnston noted that it was 11:20 AM on May 1,
137 2020, and that the Board was now in open session and that no action was taken in closed
138 session.

139

140 **Motion: In regards to case number 19-206 and case number 20-069, that the Board**
141 **would pursue an administrative suspension of this person pursuant to**
142 **454.255(b) of the Texas Occupations Code and to grant authority to the**
143 **staff to seek Injunctive relief against this person if they deem it is**
144 **appropriate**

145 **Made by: Todd Novosad**
146 **Second by: Karen Gardner**
147 **Motion passed.**

148
149 **9. Authorization to re-adopt all rules in the following chapters and sections of the**
150 **Board Rules pursuant to §2001.039 of the Government Code: Chapter 361,**
151 **Statutory Authority; Chapter 362, Definitions; Chapter 363, Consumer/Licensee**
152 **Information; Chapter 364, Requirements for Licensure; §367.1, Continuing**
153 **Education; §367.2, Categories of Education; §367.3, Continuing Education Audit;**
154 **Chapter 368, Open Records; Chapter 369, Display of Licenses; Chapter 370,**
155 **License Renewal; Chapter 371, Inactive and Retired Status; Chapter 372, Provision**
156 **of Services; Chapter 373, Supervision; Chapter 374, Disciplinary**
157 **Actions/Detrimental Practice/Complaint Process/Code of Ethics/Licensure of**
158 **Persons with Criminal Convictions; and Chapter 375, Fees**

159 Lea Weiss noted that the agency had reassessed whether the reasons for adopting the rules
160 continue to exist and as a result of the review, found that the reasons for adopting the rules
161 continue to exist.

162
163 Lea Weiss also noted that §367.4, Process for Selecting a Peer Organization to Evaluate and
164 Approve Continuing Education Courses, had been identified by the Regulatory Compliance
165 Division of the Office of the Governor as possibly having an anticompetitive market effect and
166 may not be readopted until the Board obtains the approval of the Regulatory Compliance
167 Division after the completion of the division's review of the section.

168
169 **Motion: To readopt all rules in the following chapters of the Title 40 Texas**
170 **Administrative Code: Chapter 361, Statutory Authority; Chapter 362,**
171 **Definitions; Chapter 363, Consumer/Licensee Information; Chapter 364,**
172 **Requirements for Licensure; §367.1, Continuing Education; §367.2,**
173 **Categories of Education; §367.3, Continuing Education Audit; Chapter 368,**
174 **Open Records; Chapter 369, Display of Licenses; Chapter 370, License**
175 **Renewal; Chapter 371, Inactive and Retired Status; Chapter 372, Provision**
176 **of Services; Chapter 373, Supervision; Chapter 374, Disciplinary**
177 **Actions/Detrimental Practice/Complaint Process/Code of Ethics/Licensure**
178 **of Persons with Criminal Convictions; and Chapter 375, Fees**

179 **Made by: DeLana Honaker**
180 **Second by: Karen Gardner**
181 **Motion passed.**

182
183 Lea Weiss noted that the section under review was added to the Board Rules pursuant to
184 previous legislative action.

185
186 **10. Authorization to propose changes to the following sections of the Board rules in**
187 **the *Texas Register* concerning initial licensure requirements:**
188 **A. §364.1, Requirements for Licensure**
189 **B. §364.2, Initial License by Examination**
190 **C. §364.3, Temporary License**

191 **D. §364.4, Licensure by Endorsement**

192 Lea Weiss noted that the following changes could be made to streamline and increase the
193 efficiency of the Board's licensing processes, including through the use of digital technology,
194 and reduce potential burdens for applicants:

195
196 Possible amendments to §364.1, §364.2, and §364.4 concern the application submission
197 criteria required for the issuance of a license. An amendment to §364.1 would allow an
198 applicant to submit the photograph required for initial licensure in electronic form. Amendments
199 to §364.2 and §364.4 include adding provisions that would allow the Board to verify an
200 applicant's history of licensure in occupational therapy, rather than routinely requiring that an
201 applicant submit a verification of license from each state or territory of the U.S. in which the
202 applicant is currently licensed or previously held a license. The amendments include that if the
203 Board cannot verify the applicant's history of licensure, the applicant must submit a verification
204 of license. The amendments concerning license verification will result in applicants only being
205 required to submit verifications for licenses that the Board cannot verify.

206
207 Additional amendments to §364.1, Requirements for Licensure, would remove redundant
208 language that already appears in another section of the Board Rules and includes a further
209 cleanup for consistency.

210
211 The possible amendments include changes to §364.3, Temporary License. Amendments could
212 remove the reference to 90 days with regard to the NBCOT examination eligibility window
213 referenced therein and replace such with "eligibility." This change will ensure that the section
214 will not specify a number of days that are determined by another entity, the National Board for
215 Certification in Occupational Therapy, prior to sending the form to the Board.

216
217 To bring greater uniformity to the Board Rules and remove potential barriers to licensure for an
218 applicant who would otherwise be eligible for a temporary license, the amendments include the
219 removal of language from the provision that would prevent an applicant from obtaining a
220 temporary license in Texas if the applicant has received a license in another country.

221
222 Possible amendments to the section could, similarly, make temporary licensure as an
223 occupational therapy assistant available to an applicant for an occupational therapy assistant
224 license who has had a history of licensure or employment as an occupational therapist. The
225 changes, likewise, could be proposed to bring greater uniformity to the Board Rules and remove
226 a potential barrier to temporary licensure for an applicant who otherwise would be eligible for
227 such.

228
229 The amendments include additional cleanups to the sections.

230
231 **Motion: To approve publishing proposed rule §364.1, Requirements for Licensure;**
232 **§364.2, Initial License by Examination; §364.3, Temporary License; and**
233 **§364.4, Licensure by Endorsement**

234 **Made by: Sally Harris King**

235 **Second by: DeLana Honaker**

236 **Motion passed.**

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11. **Authorization to propose changes to the following chapters and sections of the Board rules in the *Texas Register*, including changes pursuant to HB 2059 of the 86th Regular Legislative Session and the addition of training on human trafficking as a condition for license renewal and changes concerning requirements for a late renewal, the restoration of an expired Texas license, and retired status:**
- A. §367.1, Continuing Education**
 - B. Chapter 370, License Renewal**
 - C. Chapter 371, Inactive and Retired Status**

Lea Weiss noted that the following changes could be made:

Possible amendments to the sections would require the completion of human trafficking prevention training approved by the Health and Human Services Commission, pursuant to HB 2059, as a condition for license renewal for all occupational therapy licensees.

Possible amendments to §367.1 could also pre-approve up to two contact hours for a human trafficking prevention training course and allow a specific training course to be repeated for credit during a subsequent renewal period.

Possible amendments to §370.2, Late Renewal, and §370.3, Restoration of a Texas License, could also be proposed to support the Board in streamlining and increasing the efficiency of its licensing processes, including through the use of digital technology, and reduce potential burdens for applicants. The amendments also cleanup and modify requirements for the renewal of an expired license.

Amendments to §370.2 include as a cleanup the replacement of the current §370.2(a) with simplified language. An additional amendment to the section concerns removing the requirement that to renew a license expired for more than 90 days, but less than one year, the individual must submit copies of the continuing education documentation. This change will reduce requirements for a late renewal and streamline the late renewal process.

Amendments to §370.3 concern the renewal of a license expired one year or more. Amendments to the section would allow an applicant to submit the photograph required for the restoration of a license in electronic form and would allow the Board to verify an applicant's history of licensure in occupational therapy, rather than routinely requiring that an applicant submit a verification of license from each state or territory of the U.S. in which the applicant is currently licensed or previously held a license. The amendments include that if the Board cannot verify the applicant's history of licensure, the applicant must submit a verification of license. The amendments concerning license verification will result in applicants only being required to submit verifications for licenses that the Board cannot verify.

A further amendment to §370.3 concerns reducing the number of continuing education hours required for the restoration of a license expired at least one year, but less than two years, to coincide with recent changes concerning continuing education to other rule sections.

The amendments include further cleanups.

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284 An additional modification to the section would include that certain restoration requirements for
285 an individual whose license is expired two years or more must be completed no more than two
286 years prior to the submission of the application. The amendment could be proposed to specify
287 a time frame during which the requirements must be met in the corresponding subsection.

288

289 Amendments to §371.1, Inactive Status, and §371.2, Retired Status, could also be proposed to
290 cleanup and clarify the sections and to reduce the requirements to initiate retired status.

291 Cleanups and clarifications to the sections include amendments to provisions concerning fees to
292 add greater uniformity and clarity to the manner in which such are referenced.

293

294 Amendments to §371.2 include changes concerning reducing the number of hours of continuing
295 education required to initiate retired status. Rather than requiring that the individual complete
296 the same number of continuing education hours required to renew an active or inactive status
297 license, the amendments will instead require that to initiate retired status, the individual must
298 complete six hours of continuing education, which is the number of hours required to renew a
299 license already on retired status. This change will reduce potential barriers for licensees
300 concerning the initiation of retired status. Concomitant with these changes, requirements to
301 return a license to active status were revised so that a licensee who has been on retired status
302 less than one year must complete the remainder of continuing education hours required for the
303 renewal of a license on active status.

304

305 **Motion: To approve publishing proposed rule §367.1, Continuing Education; §370.2,**
306 **Late Renewal; §370.3, Restoration of a Texas License; §371.1, Inactive**
307 **Status; and §371.2, Retired Status**

308 **Made by: Karen Gardner**

309 **Second by: DeLana Honaker**

310 **Motion passed.**

311

312 **12. OT Coordinator's Report, concerning Board licensing statistics, entry-level**
313 **occupational-therapy accreditation statistics and updates, and updates**
314 **concerning the development of an interstate licensure compact in occupational**
315 **therapy by the Council of State Governments, the American Occupational Therapy**
316 **Association, and the National Board for Certification in Occupational**
317 **Therapy**

318 Lea Weiss discussed Board licensing statistics, entry-level occupational-therapy accreditation
319 statistics and updates, and updates concerning the development of an interstate licensure
320 compact in occupational therapy by the Council of State Governments, the American
321 Occupational Therapy Association, and the National Board for Certification in Occupational
322 Therapy.

323

324 **13. Presiding Officer's Report, concerning developments in the field of occupational**
325 **therapy, including the development of an interstate licensure compact in**
326 **occupational therapy by the Council of State Governments, the American**
327 **Occupational Therapy Association, and the National Board for Certification in**
328 **Occupational Therapy, the NBCOT: Orientation for New Board Members event,**

329 **and entry-level occupational-therapy accreditation updates, including**
330 **concerning the Accreditation Council for Occupational Therapy Education**
331 Stephanie Johnston discussed developments in the field of occupational therapy, including the
332 development of an interstate licensure compact in occupational therapy by the Council of State
333 Governments, the American Occupational Therapy Association, and the National Board for
334 Certification in Occupational Therapy; the NBCOT: Orientation for New Board Members event;
335 and entry-level occupational-therapy accreditation updates, including concerning the
336 Accreditation Council for Occupational Therapy Education.

337
338 **14. Future Board meeting dates and agenda items for future consideration**
339 Stephanie Johnston noted that Board meetings have been scheduled for July 31, 2020;
340 November 6, 2020; February 5, 2021; and May 7, 2021, with possible committee meetings to be
341 held July 30 and 31, 2020; November 5 and 6, 2020; February 4 and 5, 2021; and May 6 and 7,
342 2021.

343
344 Stephanie Johnston noted that possible agenda items for the upcoming meeting may include
345 items related to the possible adoption of proposed changes from the May 1, 2020 meeting.

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347 **15. Adjournment**
348 The Board adjourned at 12:14 PM.

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350 **Minutes approved on:** July 31, 2020