

1 **Texas Board of Occupational Therapy Examiners**

2 **BOARD MEETING MINUTES**

3 August 2, 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 DeLana Honaker, OTR, PhD, CLT, FAOTA, Secretary
10 Blanca Cardenas, Public Member
11 Jennifer B. Clark, COTA
12 Karen Gardner, OTR
13 Sally Harris King, COTA
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15 **Members Absent:** Amanda Jean Ellis, Public Member
16 Pamela D. Nelon, Public Member
17 Todd Novosad, OTR, Vice Chair
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19 **Counsel Present:** Kara Holsinger, Assistant Attorney General
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21 **Staff Present:** Ralph Harper, Executive Director
22 Amy Carter, Chief Investigator
23 Michael Briscoe, Licensing Manager
24 Lea Weiss, OT Coordinator
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26 **Public Attendees:** None
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28 **1. Call to Order**

29 The meeting was called to order at 9:18 AM on August 2, 2019, by Stephanie Johnston,
30 Presiding Officer. She called the roll and announced that a quorum existed and welcomed
31 Ralph Harper, previously the agency's senior accountant, as the agency's new executive
32 director, and Amy Carter, previously one of the agency's investigators, as the agency's new
33 chief investigator. The Board congratulated Ralph Harper and Amy Carter on their new
34 positions and expressed wishes for a happy retirement for John Maline and Mark Turek, the
35 previous executive director and chief investigator, respectively, in absentia.
36

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

38 **Motion:** To approve the excuse of Amanda Jean Ellis, Pamela D. Nelon, and Todd
39 Novosad for the absence at the August 2, 2019 Board meeting

40 **Made by:** DeLana Honaker

41 **Second by:** Karen Gardner

42 **Motion passed.**
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44 **3. Public comment**

45 There was no public comment.
46

47 **4. Approval of Minutes of May 3, 2019**
48 **Motion: To approve the minutes as written**
49 **Made by: Karen Gardner**
50 **Second by: Sally Harris King**
51 **Motion passed.**

52
53 **5. Discussion and possible action on the Executive Director's Report concerning**
54 **fiscal and budgetary matters, performance measures, ongoing projects, agency**
55 **personnel matters, Executive Council activity, recent legislative session, and**
56 **other agency business**

57 Ralph Harper briefed the Board on fiscal and budgetary matters, performance measures,
58 ongoing projects, agency personnel matters, Executive Council activity, and the current
59 legislative session. The Board discussed the agenda item. No action was taken.

60
61 **6. Investigation Committee Report**

62 **A. Review and possible action on Agreed Orders for Case #s: 19-085; 19-099;**
63 **19-100; 19-105; 19-108; 19-112; 19-115; 19-120; 19-124; 19-127; 19-135;**
64 **19-142 and 19-147**

65 Amy Carter presented agreed orders for the following case numbers: 19-085; 19-099; 19-100;
66 19-105; 19-108; 19-112; 19-115; 19-120; 19-124; 19-127; 19-135; 19-142 and 19-147.

67
68 The Board reviewed and ratified the agreed orders for case numbers: 19-085; 19-099; 19-100;
69 19-105; 19-108; 19-112; 19-115; 19-120; 19-124; 19-127; 19-135; 19-142 and 19-147.

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71 **B. Discussion and possible action on the Investigation Committee meeting of**
72 **July 1, 2019**

73 Amy Carter reported that 47 cases were reviewed at the April 10, 2019 meeting, resulting in the
74 Investigation Committee's issuance of thirteen Agreed Orders. One informal conference was
75 held.

76
77 **C. Discussion and possible action on investigative activities to date**

78 Amy Carter reported on performance measures, on-site investigations, presentations, and
79 further investigative activities since the last Board meeting.

80
81 **7. Discussion and possible action on adopting the repeal of Chapter 376,**
82 **Registration of Facilities, and adopting changes to proposed §362.1, Definitions;**
83 **§374.1, Disciplinary Actions; and §374.2, Detrimental Practice**

84 Lea Weiss noted the following:

85
86 The repeal of Chapter 376 would discontinue the registration of occupational therapy facilities
87 as mandated by changes to the OT Practice Act pursuant to SB 317 in the 85th Regular
88 Legislative Session. The repeal would remove from the OT Rules requirements to register an
89 occupational therapy facility with the Board and renew the registration annually and the
90 requirement that occupational therapy practitioners may only practice in an occupational therapy
91 facility if that facility is registered or exempt from the registration requirement.

92

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

96
97 Changes to §374.1 would remove from the section references to facilities in a provision
98 concerning understanding and complying with the OT Practice Act and the OT Rules and a
99 provision concerning the publishing of final disciplinary actions taken by the Board. In addition,
100 the adoptions would add to §374.1 that “The board may expunge any record of disciplinary
101 action taken against a license holder before September 1, 2019, for practicing in a facility that
102 failed to meet the registration requirements of §454.215 of the Act (relating to Occupational
103 Therapy Facility Registration), as that section existed on January 1, 2019. The board may not
104 expunge a record under this subsection after September 1, 2021.” The provision would be
105 adopted pursuant to SB 317 and the addition to the OT Practice Act of §454.307, concerning
106 record of disciplinary action and expungement.

107
108 The changes would also eliminate failure to register or renew a facility registration and
109 practicing in an unregistered facility from the list of practices considered detrimental to the public
110 health and welfare in §374.2 and from a schedule of sanctions in §374.1.

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112 Lea Weiss noted that possible changes upon adoption could be to revise two rule references
113 contained in the schedule of sanctions in §374.1 to coincide with related numbering changes in
114 the proposed amendments to §374.2.

115
116 Lea Weiss noted that no public comments were received regarding the rule changes.

117
118 The Board discussed the proposed rule changes and possible changes to §374.1 upon
119 adoption.

120
121 **Motion: To adopt the repeal of Chapter 376, Registration of Facilities, and adopt**
122 **amendments to §362.1, Definitions, and §374.2, Detrimental Practice, and**
123 **adopt amendments with changes to §374.1, Disciplinary Actions, with an**
124 **effective date of September 1, 2019, or as soon as possible thereafter**

125 **Made by: Karen Gardner**

126 **Second by: DeLana Honaker**

127 **Motion passed.**

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129 **8. Discussion and possible action on adopting changes to proposed §367.1,**
130 **Continuing Education; §367.2, Categories of Education; and §367.3, Continuing**
131 **Education Audit**

132 Lea Weiss noted the following:

133
134 The amendments to the sections would revise continuing education requirements including to
135 change the number of continuing education hours required for renewal, to remove certain
136 courses from the list of unacceptable activities, to add a provision concerning under what
137 circumstances a licensee may count continuing education hours earned outside of the renewal
138 cycle toward the required continuing education, to revise requirements concerning pre-approved
139 continuing education, to expand the categories of continuing education and make changes

140 therein, to revise a provision concerning requests for special consideration for continuing
141 education, and to clarify and cleanup provisions in the sections.

142

143 Proposed changes to §367.1 include reducing the number of required continuing education
144 hours per renewal period from thirty to twenty-four hours and to include language that unless
145 otherwise specified in the chapter, one hour of continuing education is equal to one contact
146 hour. A provision would also add that licensees who submit their renewal with all required items
147 prior to the month when their license expires may count CE completed during their license's
148 expiration month for their next renewal period. Additional changes to §367.1 include removing a
149 number of courses from the list of activities not acceptable for continuing education. The
150 amendments also clarify that all continuing education activities that are approved or offered by
151 the American Occupational Therapy Association or the Texas Occupational Therapy
152 Association are pre-approved by the Board.

153

154 The proposed amendments to the section include further cleanups, including removing a
155 provision requiring that those renewing a license more than ninety days late must submit proof
156 of continuing education for the renewal as §370.1, concerning late renewal, of the OT Rules,
157 already contains a provision addressing the submission of CE documentation for late renewal.

158

159 Proposed changes to §367.2 revise the categories of continuing education and the
160 requirements therein and include cleanups to the section to use the term "contact hours"
161 consistently and to remove redundant language. Revisions to the categories of continuing
162 education include amendments regarding the CE a licensee may earn for the supervision of
163 fieldwork students. In addition, the category was expanded to allow a licensee to earn credit for
164 the supervision of a student completing a supervised project for the accredited educational
165 program and for the supervision of a student completing a re-entry course through an accredited
166 college or university. The amendments also revise the continuing education credit a licensee
167 may earn for the completion of NBCOT Navigator activities and authorize continuing education
168 credit for completion of the AOTA Benchmark. In addition, a provision concerning a request for
169 special consideration for continuing education has been revised to add that such must be
170 submitted in writing a minimum of 60, though no more than 270, days prior to expiration of the
171 license.

172

173 Proposed changes to the section include further clarifications, cleanups, and revisions including
174 the removal of language concerning §373.3 of the OT Rules, which concerned supervision of an
175 occupational therapy assistant, as that section has been repealed from the OT Rules.

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177 Proposed changes to §367.3 concern cleanups and clarifications and add that documentation of
178 continuing education includes letters of verification and that hours may be listed on continuing
179 education documentation.

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181 Lea Weiss noted that possible changes upon adoption could be to add the clarifying phrase
182 "hours or" to §367.3(e) so that the provision would include "When continuing education units
183 (CEUs), professional development units (PDUs), or other units or credits are listed on the
184 documentation, such must be accompanied by documentation from the continuing education
185 provider noting the equivalence of the units or credits in terms of hours or contact hours."

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One public comment was received from the American Occupational Therapy Association (AOTA) in support of the inclusion of AOTA's Benchmark as an acceptable continuing education activity in the proposed amendments to §367.2. The Board agreed with the comment and made no changes to the proposal based on the comment.

The Board discussed the proposed rule amendments and possible changes upon adoption to §367.3.

Motion: To adopt amendments to §367.1, Continuing Education, and §367.2, Categories of Education, and adopt amendments with changes to §367.3, Continuing Education Audit, with an effective date of September 1, 2019, or as soon as possible thereafter

Made by: Jennifer B. Clark

Second by: Sally Harris King

Motion passed.

9. Discussion and possible action on proposing rule amendments to §370.1, License Renewal, including concerning continuing education and pursuant to SB 37 of the 86th Regular Legislative Session, relating to a prohibition on the use of student loan default or breach of a student loan repayment as a ground for refusal to renew a license

Lea Weiss noted that the possible amendments would reflect law changes made by SB 37 of the 86th Regular Legislative Session, relating to a prohibition on the use of student loan default or breach of a student loan repayment as a ground for refusal to renew a license. Related changes to §370.1 could be proposed to remove from the section a provision restricting the renewal of a license for an individual who has defaulted with the Texas Guaranteed Student Loan Corporation.

Additional amendments could be proposed as cleanups and clarifications. An amendment could be proposed to strike a reference in the section to the number of continuing education hours required per renewal period and to replace such with language referencing continuing education requirements as per Chapter 367, concerning Continuing Education, as adopted amendments to that chapter changed the number of required hours from thirty to twenty-four hours. Additional amendments could remove a redundant reference to the address of record, as language concerning such is already located elsewhere in the OT Rules, and to clarify a provision regarding a restriction on renewal for certain child support issues, including to add a reference to related statutory language in Texas Family Code.

The Board discussed the possible changes.

Motion: To propose and publish the amendments to §370.1, License Renewal

Made by: Karen Gardner

Second by: DeLana Honaker

Motion passed.

232 **10. Discussion and possible action on proposing new rule §364.5 concerning**
233 **recognition of an out-of-state license of a military spouse pursuant to SB 1200 of**
234 **the 86th Regular Legislative Session, relating to the authority of certain military**
235 **spouses to engage in a business or occupation in this state**

236 Lea Weiss noted that the new rule could be proposed to add provisions to the OT Rules
237 concerning the recognition of out-of-state licenses of military spouses as required by SB 1200 of
238 the 86th Regular Legislative Session.

239

240 New rule §364.5 would add to the OT Rules provisions concerning the information a military
241 spouse seeking recognition of the out-of-state license must submit to the Board and the
242 conditions under which the military spouse may practice in the state once the individual
243 has received confirmation from the Board that the military spouse is authorized to engage in the
244 practice of occupational therapy.

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246 Lea Weiss noted further provisions for the new rule pursuant to SB 1200.

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248 The Board discussed the possible changes.

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250 **Motion: To propose and publish new rule §364.5, Recognition of Out-of-State**
251 **License of Military Spouse**

252 **Made by: DeLana Honaker**

253 **Second by: Sally Harris King**

254 **Motion passed.**

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

259 Lea Weiss discussed recent activities at the Board and information regarding Board licensing
260 statistics.

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

265 Stephanie Johnston noted that she and Lea Weiss had attended NBCOT's regulatory
266 conference in May including sessions on sunset processes and licensure and examination
267 issues.

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

271 Stephanie Johnston noted that Board meetings had been scheduled for February 7, 2020; May
272 1, 2020; and July 31, 2020, with possible committee meetings to be held February 6 and
273 7, 2020; April 30 and May 1, 2020; and July 30 and 31, 2020.

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275 The Board discussed rescheduling the November 14 and 15, 2019, board and possible
276 committee meeting dates. The Board rescheduled such, with the board meeting scheduled for
277 October 25, 2019, and possible committee meetings for October 24 and 25, 2019.

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279 Stephanie Johnston noted that possible agenda items for the upcoming meeting may include
280 items related to the possible adoption of proposed rules required by legislation from the 86th
281 Regular Legislative Session.

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283 **14. Adjournment**

284 The Board adjourned at 10:47 AM.

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286 **Minutes adopted on:** October 25, 2019