

The Florida Board of Occupational Therapy Practice

**Minutes
MAY 6, 2019
GENERAL BUSINESS MEETING**



**Mr. James Spafford, Board Chair
Dr. Caylee Banta, Vice Chair**

MINUTES

**DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY PRACTICE
GENERAL BUSINESS MEETING
MAY 6, 2019**

**4042 Bald Cypress Way, Conference Room # 301
Tallahassee, FL 32399-3255
Office Telephone Number: (850) 245-4373**

Participants in this public meeting should be aware that these proceedings are being recorded and that an audio file of the meeting will be posted to the Board's website.

Call to Order

Mr. Spafford, Board Chair, called the meeting to order at 9:01 a.m. Those present for all or part of the meeting, included the following:

MEMBERS PRESENT

Mr. James F. Spafford, Consumer Member, Chair
Ms. Tameka German, OT
Ms. Elena Vizvary, OT

STAFF PRESENT

Allen Hall, Executive Director
Anna King, Program Administrator

MEMBERS ABSENT

Dr. Caylee Banta, OT, Vice-Chair - Excused

ASSISTANT ATTORNEY GENERAL

Lynette Norr, Board Counsel

ASSISTANT GENERAL COUNSEL

Zachary Bell, Prosecuting Attorney

COURT REPORTER

For the Record
850-222-5941

fortherecord@tallahasseecourtreporting.com

To accommodate individuals wishing to address the Board, the Board Chair may adjust the sequence of the agenda items. The minutes reflect the actual sequence of events rather than the original agenda order.

PRESENTATION

1. Barbara Williams, NBCOT Associate Director, External & Regulatory Affairs

The National Board for Certification in Occupational Therapy (NBCOT) administers the certification examinations and certification maintenance programs for Occupational Therapists (OTR[®]) and Occupational Therapy Assistants (COTA[®]).

Ms. William's presentation to the Board provided information on current programs and services offered by the NBCOT, to include those available for prospective students seeking certification, certificants, as well as state regulatory boards.

The Board extended its appreciation for Ms. William's time and valuable efforts to keep it apprised of services offered by the NBCOT.

DISCIPLINARY PROCEEDINGS:

MOTION FOR BOARD'S FINAL ORDER BY SETTLEMENT AGREEMENT

2. Armando Perez, DOH Case #2014-09469
OT14037, File #13497 (PCP: Johnson & Hicks)

Mr. Perez was not present nor represented by legal counsel.

Mr. Bell presented the Department of Health's Motion for Final Order by Settlement Agreement and summarized the case for the Board. Respondent was charged with a violation of Section 468.217(1)(q), Florida Statutes, for failing to practice occupational therapy with that level of care, skill, and treatment which is recognized by a reasonably prudent similar occupational therapist as being acceptable under similar conditions and circumstances.

Following discussion, Mr. Spafford moved to accept the Settlement Agreement with the following specifications:

- Reprimand;
- Fine in the amount of \$1,000 payable within 2 years of the filing of the final order in this case;
- Costs not to exceed \$7,000 payable within 2 years of the filing of the final order in this case;
- Continuing education in the amount of 10 hours to include 6 hours in Thermal Agents in Rehab and 4 hours in Medical Errors; and
- Probation for 1 Year with the following terms specified by the Board:
 - Approval of Probation Monitor by Chair, as delegated by the Board;
 - Direct Supervision when licensee is using physical agent modalities;
 - Indirect Supervision and evaluation of work products, charts, etc., with reports to be made by the Monitor to the Board on a quarterly basis.

Ms. German seconded the motion, which carried 3/0.

MOTION FOR DETERMINATION OF WAIVER AND FOR FINAL ORDER BY HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

3. Sergio Enrique Santana, DOH Case #2017-12608
OTA10856, File #3769 (PCP: Johnson & Banta)

Mr. Santana was not present nor represented by legal counsel.

Mr. Bell presented the Department of Health's Motion for Determination of Waiver and Final Order by Hearing Involving Disputed Issues of Material Fact and summarized the case for the

Board. Respondent was charged with the following violations: 1) Section 468.217(1)(x), Florida Statutes (2017), through a violation of Section 456.072(1)(x) (2017), for failing to report to the Board in writing within 30 days of entering a guilty plea to the crime of Conspiracy to Commit Health Care Fraud, a felony under Title 18, U.S.C., Section 1349 and 2) Section 468.217(1)(x), Florida Statutes, through a violation of Section 456.072(1)(c), Florida Statutes (2017), for being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, a crime related to the practice or ability to practice occupational therapy.

Mr. Spafford made a motion to accept the Investigative Report into evidence for purposes of imposing a penalty, to find that the Respondent was properly served and had waived the right to a formal hearing, and to adopt the findings of fact as set forth in the Administrative Complaint. Ms. German seconded the motion, which carried 3/0.

Mr. Spafford made a motion to adopt the conclusions of law as set forth in the Administrative Complaint, finding this constitutes a violation of the Practice Act. Ms. German seconded the motion, which carried 3/0.

Following discussion, Mr. Spafford moved to impose the following penalty: a fine in the amount of \$10,000 payable within 4 years of the final order filed in this case. Ms. German seconded the motion, which carried 3/0.

Ms. German moved that the Respondent's license be revoked. Ms. Vizvary seconded the motion, which carried 3/0.

Following discussion, Mr. Spafford moved to impose costs in the amount of \$457.88. Ms. German seconded the motion, which carried 3/0.

ADMINISTRATIVE PROCEEDINGS

PROSECUTOR'S REPORT

4. Zachary Bell, Prosecuting Attorney

Mr. Bell presented the Prosecutor's Report outlining the status of open/active disciplinary cases.

Total Cases open/active in PSU:	<u>25</u>
• Cases in EAU:	1
• Cases under legal review:	13
• Cases where PC Recom made:	5
• Total Cases where PC has been found:	5
• Cases in holding status:	0
• Cases pending before DOAH:	0
• Cases Agendaed for Board:	2
• Cases on Appeal:	0
• Year Old Cases:	18

Mr. Spafford made a motion to allow PSU to continue to prosecute any cases noted as older than 1 year. The motion was seconded by Ms. German and carried with a 3/0 vote.

REVIEW OF LICENSURE ORDER COMPLIANCE

5. Jeremiah Klotz, File #16964, OT by Endorsement

Prior to the meeting, Mr. Klotz withdrew his application from further consideration by the Board.

AUDIT OF CONTINUING EDUCATION PROVIDERS

6. Home CEU Connection, CE Provider #50-8744

The Board office received a complaint from Ms. Elena Vizvary regarding the suitability of live webinar courses offered by Home CEU Connection (Home CEU). Home CEU was originally approved by the Board in August of 2008. Board staff sent inquiry to Home CEU Connection requesting review and response to the key concerns expressed by the licensee. The provider's response was provided to the Board for review and any actions deemed necessary.

Ms. Norr inquired of Ms. Vizvary as to whether she had any financial connections to HomeCEU or any bias which would affect her ability to objectively participate in the discussion. Ms. Vizvary responded in the negative to both inquiries.

Following discussion, Mr. Spafford moved that a Board member audit an online/webinar offering of HomeCEU to determine the suitability of their live offerings. Ms. German seconded the motion, which carried 3/0. Ms. German agreed to perform the audit on the Board's behalf.

Mr. Spafford moved to table further discussion on this matter pending the results of the audit. Ms. German seconded the motion, which carried 3/0.

7. Achieve CE, CE Provider #50- 20641, Laws and Rules of Florida: Occupational Therapy Update Course, CE Tracking #20-623309

The Board office received a complaint from a licensed occupational therapist regarding the suitability of the Laws and Rules of Florida: Occupational Therapy Update, CE Tracking #20-623309 offered by Achieve CE. Achieve CE Connection was originally approved by the Board in July of 2018. The provider's response was provided to the Board for review and any actions deemed necessary.

Following discussion, Mr. Spafford moved to have the Board's CE Liaison, Dr. Caylee Banta, review the updated course revisions submitted by the provider for acceptability. Ms. German seconded the motion, which carried 3/0.

The revised course is not to be offered until Dr. Banta approves the revisions.

APPLICANT RATIFICATION LISTS

8. Licensed Occupational Therapists

Mr. Spafford moved to approve the licensure ratification list of 265 Occupational Therapists. The motion was seconded by Ms. German and carried with a 3/0 vote. (APPENDIX 1)

9. Licensed Occupational Therapy Assistants

Mr. Spafford moved to approve the licensure ratification list of 170 Occupational Therapy Assistants. The motion was seconded by Ms. German and carried with a 3/0 vote. (APPENDIX 2)

10. Continuing Education Provider Applications

Mr. Spafford moved to approve 7 continuing education providers, 2 prevention of medical errors course providers, and 1 Florida Laws and Rules course provider. The motion was seconded by Ms. German and carried with a 3/0 vote. (APPENDIX 3)

RULES REVIEW AND DEVELOPMENT

11. Rule 64B11-4.001, F.A.C., Use of Prescription Devices

During the February 2019 meeting, the Board discussed developing proposed rule language to address the use of neurofeedback in the practice of Occupational Therapy.

Ms. German informed the Board she is currently working on proposed rule text regarding the didactic and supervision training requirements and intends to provide additional information for the Board's consideration at the next meeting of the Board in August 2019.

12. Rule 64B11-5.003, F.A.C., Requirements for Reactivation of an Inactive License

Ms. Norr requested the Board consider the following proposed rule revision pursuant to a letter received from the Joint Administrative Procedure Committee.

64B11-5.003 Requirements for Reactivation of an Inactive License.

(1) - (4) No change.

(5) The provisions of Rules 64B11-2.012 and ~~64B11-3.009~~, F.A.C., are not applicable to licensees reactivating inactive licenses.

Rulemaking Authority 456.036, 468.204, 468.219 FS. Law Implemented 456.036, 468.219 FS. History—New 4-17-95, Formerly 59R-64.020, Amended 10-18-01, 8-2-05, 5-29-06, 10-15-06, _____.

Following discussion, Mr. Spafford moved to approve the proposed rule text. Ms. German seconded the motion, which carried 3/0.

Mr. Spafford moved the proposed rule language would not have an adverse impact on small business nor have an economic impact on government or any other entity in excess of \$200,000

within one year of the rule being implemented. Ms. German seconded the motion, which carried 3/0.

Mr. Spafford moved the proposed rule language should not be designated as a minor violation for first time offenses. Ms. German seconded the motion, which carried 3/0.

RULES STATUS REPORT

13. Assistant Attorney General, Lynette Norr, Esquire

Ms. Norr presented the following report on the status of rules in process for the Board.

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Proposed Rule Notice Published, JAPC Letters, Notices of Change, etc.	Certified for Adoption	Effective 20 days after Certification
64B11-2.003	Fees; Application	02/25/2019	(D) 10/30/2018 (N) 03/27/2019	11/07/2018	Anticipated 04/04/2019		
64B11-4.001	Use of Prescription Devices		(D) 10/30/2018	11/07/2018			
64B11-5.003	Requirements for Reactivation of an Inactive License				Ltr from JAPC 03/06/2019 Response to JAPC 03/13/2019		

OLD BUSINESS

14. February 25, 2019, General Business Meeting Minutes

Mr. Spafford made a motion to approve the February 25, 2019 minutes as presented. The motion was seconded by Ms. German and carried with a 3/0 vote.

REPORTS, IF ANY

15. Board Chair, Jim Spafford

Mr. Spafford noted that National Occupational Therapy Month took place in April and took time to recognize and thank the professional members of the Board for their service.

- Other Board Members

Ms. Vizvary provided an update on her Board membership, stating she was informed by the Governor's Appointments Office she is eligible to serve until re-appointed or succeeded.

16. Executive Director
- Cash Balance Report
 - Expenditures By Function

In addition to the noted reports, Mr. Hall provided a legislative update on the outcome of bills of interest. Mr. Hall expounded upon CS/CS/HB 23 (2019), Telehealth, which if signed by the Governor, would be effective July 1, 2019. The bill provides telehealth standards for Florida licensees and establishes a registration system for practitioners licensed outside of Florida who wish to treat patients in Florida through telehealth.

Mr. Spafford inquired regarding the disciplinary process for out-of-state practitioners who might use telehealth to provide services to clients in Florida. Mr. Hall indicated he believed the individual's registration could be impacted as well as a report of same be made to the practitioner's state of licensure. Mr. Spafford requested additional information be provided regarding the background in developing key portions of the Telehealth bill legislation.

OTHER BUSINESS AND INFORMATION *(items that do not require Board action)*

17. Staff Recognition

Informational item.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:45 a.m.

ATTACHMENTS:

APPENDIX 1- Licensed Occupational Therapists Ratification List

APPENDIX 2- Licensed Occupational Therapy Assistants Ratification List

APPENDIX 3- Continuing Education Provider Applications Ratification List