

The Florida Board of Occupational Therapy Practice

Minutes **DRAFT**
FEBRUARY 24, 2020



James Spafford, Board Chair

MINUTES DRAFT
DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY PRACTICE
GENERAL BUSINESS MEETING
FEBRUARY 24, 2020
4042 Bald Cypress Way, Conference Room # 301
Tallahassee, FL 32399-3255
Office Telephone Number: (850) 245-4373

Call to Order

9:00 a.m. EST - Call to Order - General Business Meeting

Mr. Spafford, Board Chair, called the meeting to order at 9:00 a.m. Those present for all or part of the meeting, included the following:

MEMBERS PRESENT

James F. Spafford, Consumer Member, Chair
Dr. Caylee Banta, OT, Vice Chair
Tameka German, OT
Elena Vizvary, OT

STAFF PRESENT

Allen Hall, Executive Director
Anna King, Program Director
Deborah Boutwell, Regulatory Specialist
Giselle Horton, Regulatory Specialist

ASSISTANT ATTORNEY GENERAL

Ronald "Tom" Jones, Board Counsel

PROSECUTING ATTORNEY

Zachary Bell, Prosecuting

COURT REPORTER

For the Record Court Reporting
Peggy Ward (850) 222-5491

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.

GENERAL BUSINESS

DISCIPLINARY PROCEEDING

VOLUNTARY RELINQUISHMENT

TAB 1 Sherry B. O'Halloran, OTA, DOH Case # 2017-14996
OTA 6822, File # 1324 (PCP, Johnson & *Banta)

*Dr. Banta was recused due to her participation in case review on the Probable Cause Panel.

Ms. O'Halloran was not present nor represented by legal counsel.

Mr. Bell presented and summarized this case as a Voluntary Relinquishment which was initially processed as a Motion for Determination of Waiver for the Board. Respondent was charged with violating Section 468.217(1)(x), Florida Statutes (2017), which provides that violating any provision of this chapter or chapter 456 or any rules adopted pursuant thereto constitutes grounds for discipline;

and Section 456.072(1)(k), Florida Statutes (2017) by failing to repay one or more student loans guaranteed by the Florida Department of Education.

After a discussion, and due to current pending legislation regarding student loan forgiveness, HB115 enrolled but not yet signed by Governor, the Chair requested the case be tabled until the outcome is known.

MOTION: Following discussion, Dr. Banta made a motion to table both TABS 1 and 2, cases regarding student loans, until to the next scheduled meeting of the Board on May 18, 2020. Ms. German seconded the motion, which carried 4/0 vote.

The motion and vote were withdrawn, due to Ms. Banta's participation on the Probable Cause Panel and need to be recused from both TABs 1 and 2.

MOTION: Following discussion, Ms. Vizvary made a motion to table both TABS 1 and 2 until to the next meeting of the Board May 18, 2020. Ms. German seconded the motion, which carried *3/0 vote.

VOLUNTARY RELINQUISHMENT

**TAB 2 Janet Sue Cohen, OTA, DOH Case # 2018-05685
OTA 10114, File # 2958 (PCP, Johnson & *Banta)**

Ms. Cohen was not present nor represented by legal counsel.

This case was **tabled** until the next scheduled meeting of the Board on May 18, 2020.

INFORMAL HEARING

**TAB 3 Luis Alonzo, OT, DOH Case # 2019-05622
OT 12543, File # 12028 (PCP, Johnson & *Spafford)**

This case was previously granted a continuance by the Board until their next scheduled meeting on May 18, 2020.

PROSECUTOR'S REPORT

TAB 2 Zachary Bell, Prosecuting Attorney

DOH/PROSECUTOR'S REPORT BOARD OF OCCUPATIONAL THERAPY MEETING Meeting Date February 24, 2020

TO: Allen Hall, Executive Director
FROM: Zachary Bell, Assistant General Counsel
DATE: January 28, 2020
RE: Current Open / Pending Occupational Therapy Cases

Total Cases open/active in PSU:	28
Cases in EAU:	1
Cases under legal review:	18
Cases where PC Recom made:	2

Total Cases where PC has been found: 8
Cases in holding status: 0
Cases pending before DOAH: 0
Cases Agendaed for Board: 3
Cases on Appeal: 0
Year Old Cases: 13

MOTION: Mr. Spafford made a motion to allow prosecution services to continue prosecuting year-old cases. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

ADMINISTRATIVE PROCEEDINGS

INDIVIDUAL CONSIDERATIONS

TAB 5. Rhonda Atkins, File # 10929 OTA by Endorsement

Ms. Atkins was present in the meeting and sworn in by the court reporter.

Ms. Atkins' application was presented to the Board due to an affirmative response to the criminal and disciplinary history sections on the application.

MOTION: After discussion, Mr. Spafford made a motion to **approve** Ms. Atkins' application for licensure. The motion was seconded by Ms. German and carried with a 4/0 vote.

TAB 6 Jennifer R. Kearns, File # 20863, OT by Examination

Ms. Kearns was present in the meeting and sworn in by the court reporter.

Ms. Kearns' application was presented to the Board due to an affirmative response to the criminal and disciplinary history section on the application.

MOTION: After discussion, Dr. Banta made a motion to **approve** Ms. Kearns' application for licensure. The motion was seconded by Ms. German and carried with a 4/0 vote.

TAB 7 Alexis Thomas, File # 20739, OT by Endorsement

Ms. Thomas was present in the meeting and sworn in by the court reporter.

Ms. Thomas' application was presented to the Board due to an affirmative response to the criminal and disciplinary history sections on the application.

MOTION: After discussion, Mr. Spafford made a motion to **approve** Ms. Thomas' application for licensure. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

TAB 8 Precision Rehability Group, CE Provider # 50-24659 Course: Hemp Derived CBD in the Healthcare Setting, Course No. 20-674149

Dr. Patrice Collier was present in the meeting and sworn in by the court reporter.

During the November 2019 meeting, the Board considered Precision Reability Group's CE course on hemp derived cannabidiol (CBD) in the health care setting. The stated intent of the course was to educate therapists and other medical professionals regarding the product, related Florida laws, and revenue generating avenues within healthcare practice. Dr. Patrice Collier, with Precision Reability Group, was not present on the call during the application discussion. The Board determined to deny the CE application due to insufficient information regarding the course's relevance to the practice of occupational therapy as defined in Florida Administrative Code 64B11-6.001(1)(b) and Florida Statute 468.203(4). The Board's Notice of Intent to Deny was filed on November 19, 2019 providing the applicant with the opportunity to file a petition for hearing within 21 days. Dr. Collier timely filed a petition for a proceeding not involving disputed issued of material fact on December 5, 2019.

Ms. Collier delivered in the meeting a revision of her course's objectives stating that CE Broker would not allow her to revise her course content, until the Board advised it was permissible. After receiving the course materials packet, and further discussion, the Board determined extended time was needed to analyze the materials and for additional research regarding the actual implementation and use of CBD oil in the practice of occupational therapy.

MOTION: After discussion, Mr. Spafford made a motion to table the discussion, with Dr. Banta and Dr. Collier agreeing to collaborate with Board staff regarding the additional research as discussed and report to the Board at the May 18, 2020 meeting. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

APPLICANT RATIFICATION LISTS

TAB 9 Licensed Occupational Therapists

MOTION: Mr. Spafford made a motion to approve the ratification list of 233 Occupational Therapists. The motion was seconded by Dr. Banta and carried with 4/0 vote.

ACTION TAKEN: 233 Occupational Therapists ratified for licensure.

TAB 10 Licensed Occupational Therapy Assistants

MOTION: Mr. Spafford to approve the ratification list of 144 Occupational Therapy Assistant applicants for licensure. The motion was seconded by Dr. Banta and carried with 4/0 vote.

ACTION TAKEN: 144 Occupational Therapy Assistants ratified for licensure.

TAB 11 Continuing Education Provider Applications

MOTION: Mr. Spafford made a motion to approve the list of 6 continuing education providers *including* Prevention of Medical Errors, Florida Laws and Rules and Human Trafficking courses and providers. This approval includes an Addendum list of 6 providers totaling 16 approved providers/courses. The motion was seconded by Dr. Banta and carried with 4/0 vote.

ACTION TAKEN: 16 providers/courses ratified for approval.

RULES REVIEW AND DEVELOPMENT

TAB 12 Rule 64B11-4.001, F.A.C., Use of Prescription Devices

Ms. Liana Valla was present in the meeting and sworn in by the court reporter.

Florida-licensed occupational therapist, Ms. Liana Valla, initiated a request for the Board's consideration of the ability to use neurofeedback in the practice of occupational therapy.

Based on review of research provided by Ms. Valla, as well as applicable regulations, the Board determined during the February 2019 to enter rule development to specify training requirements and standards for the use of neurofeedback devices by Florida's occupational therapists. Ms. German agreed to further research and work with Board Counsel on drafting rule language for the Board's consideration. Ms. Valla was invited to provide feedback as well.

Ms. German and Ms. Norr presented to the Board at the August 2019 meeting, a proposed rule draft. After discussion, the Board suggested corrections in the language, to include that Paragraph (3)(c) should be "sixteen (16) hours". Ms. German also noted that more research would be underway regarding standards for determination of dosage under Paragraph (3)(e) 4.

For the November 2019 meeting, Ms. Valla provided supplemental information and Ms. German stated she would provide an updated draft for the Board's further consideration at the February 2020 meeting.

Ms. German's revised draft was presented to the Board for review at this meeting.

MOTION: After discussion, Ms. German made a motion to approve as presented, the proposed language. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

MOTION: Mr. Spafford made a motion that 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. The motion was seconded by Ms. German and carried with a 4/0 vote.

MOTION: Mr. Spafford made a motion that the proposed rule language would not have an adverse impact on small business nor have an economic impact on government or any other entity within five years of the rule being implemented. The motion was seconded by Ms. German and carried with a 4/0 vote.

MOTION: Mr. Spafford made a motion that the proposed rule language should not be designated as a minor violation for first time offenses. The motion was seconded by Ms. German and carried with a 4/0 vote.

64B11-4.001 Use of Prescription Devices.

(1) Electrical Stimulation Device.

(a) Use of an electrical stimulation device for which a prescription is required by Federal law, 21 C.F.R. §801.109, is expressly prohibited by Section 468.203(4), F.S., except by an occupational therapist or an occupational therapy assistant who has received training as prescribed in this rule.

(b) For purposes of this rule, an "electrical stimulation device" is any device for which a prescription is required which employs transcutaneous electric current (direct, alternating, or pulsatile) for therapeutic purposes.

(c) The training required for students, postgraduates, and licensees to qualify for the use of an electrical stimulation device shall include didactic training of at least four (4) hours and

performance of at least five (5) treatments under supervision. The required training may be obtained through educational programs, workshops, or seminars offered at a college or university approved for training of occupational therapists by the American Occupational Therapy Association or of physical therapists by the American Physical Therapy Association or at clinical facilities affiliated with such accredited colleges or universities or through educational programs offered by the American Society of Hand Therapists or Florida Occupational Therapy Association. Online courses are not approved for the didactic or performance training.

(d) Supervised treatment sessions shall be conducted under the personal supervision of licensed occupational therapists and occupational therapy assistants who have completed four hours of coursework in the use of electrical stimulation devices and five (5) supervised treatments or licensed physical therapists and physical therapist assistants trained in the use of electrical stimulation devices. Treatment supervisors must have a minimum of 24 months prior experience in the use of electrical stimulation devices. Personal supervision means that the supervisor is in the room with the trainees and actively provides guidance and supervision of the performance treatments.

(e) The training provided which teaches the therapeutic uses of electrical stimulation devices shall provide for the following minimum competency level:

1. Standards.

- a. The expected outcome of treatments with Therapeutic Electrical Current (hereinafter T.E.C.) must be consistent with the goals of treatment.
- b. Treatment with T.E.C. must be safe, administered to the correct area, and be of proper dosage.
- c. Treatment with T.E.C. must be adequately documented.

2. Current Duration and Mode.

- a. Ability to determine the duration and mode of current appropriate to the patient's neurophysiological status while understanding Ohm's Law of electricity, physical laws related to the passage of current through various media, as well as impedance.
- b. Ability to describe normal electrophysiology of nerve and muscle; understanding generation of bioelectrical signals in nerve and muscle; recruitment of motor units in normal muscle and in response to a variety of external stimuli.
- c. Ability to describe normal and abnormal tissue responses to external electrical stimuli while understanding the differing responses to varieties of current duration, frequency and intensity of stimulation.

3. Selection of Method and Equipment.

- a. Ability to identify equipment with the capability of producing the preselected duration and mode.
- b. Ability to describe characteristics of electrotherapeutic equipment and understanding the therapeutic value of different electrotherapeutic equipment.
- c. Ability to describe safety regulations governing the use of electrotherapeutic equipment.
- d. Ability to describe principles of electrical currents.
- e. Ability to describe requirements/idiosyncrasies of body areas and pathological conditions with respect to electrotherapeutic treatment.

4. Preparation of Treatment.

Ability to prepare the patient for treatment through positioning and adequate instructions.

5. Treatment Administration.

a. Ability to correctly operate equipment and appropriately adjust the intensity and current while understanding rate of stimulation, identification of motor points, and physiological effects desired.

b. Ability to adjust the intensity and rate to achieve the optimal response, based on the pertinent evaluative data.

6. Documentation of Treatments.

Ability to document treatment including immediate and long-term effects of therapeutic electrical current.

(f) Any occupational therapist or occupational therapy assistant who uses such electrical stimulation device shall, upon request of the Board, or the Department, present proof that he or she has obtained the training required by this rule.

(2) Ultrasound Device.

(a) Use of an ultrasound device for which a prescription is required by Federal law, 21 C.F.R. §801.109, is expressly prohibited by Section 468.203(4), F.S., except by an occupational therapist or occupational therapy assistant who has received training as prescribed in this rule.

(b) For purposes of this rule, an “ultrasound device” is any device intended to generate and emit ultrasonic radiation for therapeutic purposes at ultrasonic frequencies above 100 kilohertz (kHz).

(c) The training required for students, postgraduates, and licensees to qualify for the use of an ultrasonic stimulation device shall include didactic training of at least four (4) hours and performance of at least five (5) treatments under supervision. The required training may be obtained through educational programs, workshops, or seminars offered at a college or university approved for training of occupational therapists by the American Occupational Therapy Association or of physical therapists by the American Physical Therapy Association or at clinical facilities affiliated with such accredited colleges or universities or educational programs offered through the American Society of Hand Therapists or Florida Occupational Therapy Association. Online courses are not approved for the didactic or performance training.

(d) Supervised treatment sessions shall be conducted under the personal supervision of licensed occupational therapists and occupational therapy assistants who have completed four hours of coursework in the use of ultrasound devices and five (5) supervised treatments or licensed physical therapists and physical therapist assistants trained in the use of ultrasound devices. Treatment supervisors must have a minimum of 24 months prior experience in the use of ultrasound devices. Personal supervision means that the supervisor is in the room with the trainees and actively provides guidance and supervision of the performance treatments.

(e) The training provided which teaches the therapeutic uses of ultrasound devices shall provide for the following minimum competency level:

1. Standards.

a. The expected outcome of treatment with ultrasound must be consistent with the goals of treatment.

b. Treatment with ultrasound must be safely administered to the correct area, and be of proper dosage.

c. Treatment with ultrasound must be adequately documented.

2. Instrumentation.

a. Ability to describe the physiological effects of pulsed versus continuous modes as well as differentiate tissue responses to the modes of application.

b. Ability to describe ultrasound absorption characteristics of various body tissues and identify sources and causes of excessive absorption in normal versus abnormal tissue.

- c. Ability to determine the medium to be used and the temperature of that medium.
 - d. Ability to select the appropriate sound head size and contour considering the area and condition being treated.
 - e. Ability to describe equipment characteristics, indications and contraindications for treatment, including identifying source and mechanisms of generation of ultrasound energy and its transmission through air and physical matter.
3. Preparation for Treatment. Ability to prepare the patient for treatment through positioning and adequate instruction.
 4. Determination of Dosage. Ability to determine dosage through determination of target depth, chronicity versus acuteness of the condition, and application of power/dosage calculation rules.
 5. Treatment Administration. Ability to administer treatment through identification of controls, sequence of operation, correct sound head application techniques and application of all safety rules and precautions.
 6. Documentation of Treatment. Ability to document treatment, including immediate and long-term effects of clinical ultrasound.
- (f) Any occupational therapist or occupational therapy assistant who uses such ultrasound device shall, upon request of the Board, or the Department, present proof that he or she has obtained the training required by this rule.

(3) Neurofeedback Device.

(a) Use of a neurofeedback device for which a prescription is required by Federal law, 21 C.F.R. §801.109, is expressly prohibited by Section 468.203(4), F.S., except by an occupational therapist or occupational therapy assistant who has received training as prescribed in this rule.

(b) For purposes of this rule, a “neurofeedback device” is any device that provides immediate feedback from a computer-based program that measures brainwave activity with the use of sound, visual and/or tactile input to cue the brain to reorganize and retrain itself.

(c) The training required for students, postgraduates, and licensees to qualify for the use of a neurofeedback device shall include didactic training of at least (16) hours and performance of at least five (5) treatments under supervision. The required training may be obtained through educational programs, workshops, or seminars offered at a college or university approved for training of occupational therapists by the American Occupational Therapy Association or of physical therapists by the American Physical Therapy Association or at clinical facilities affiliated with such accredited colleges or universities or educational programs offered through the American Society of Hand Therapists or Florida Occupational Therapy Association. Online courses are not approved for the didactic or performance training.

(d) Supervised treatment sessions shall be conducted under the personal supervision of licensed occupational therapists and occupational therapy assistants who have completed sixteen hours of coursework in the use of neurofeedback devices and five (5) supervised treatments, licensed physical therapists and physical therapist assistants who has completed sixteen hours of coursework in the use of neurofeedback devices and (5) supervised treatments, medical doctors trained in the use of neurofeedback devices, psychologists trained in the use of neurofeedback devices, or other licensed healthcare professionals trained in the use of neurofeedback devices. Treatment supervisors must have a minimum of 24 months prior experience in the use of neurofeedback devices. Personal supervision means that the supervisor is in the room with the trainees and actively provides guidance and supervision of the performance treatments.

(e) The training provided which teaches the therapeutic uses of neurofeedback devices shall provide for the following minimum competency level:

1. Standards.

a. The expected outcome of training with neurofeedback devices must be consistent with the goals of treatment.

b. Training with neurofeedback devices must be safely administered to the scalp .

c. Training with neurofeedback devices must be adequately documented.

2. Instrumentation.

a. Ability to describe core concepts, methods, and instrumentation of neurofeedback

b. Ability to interpret the EEG (electrocephalogram) with respect to signal integrity and the presence of artifacts

c. Ability to understand and describe concepts of frequency and amplitude

d. Ability to create, adjust and adapt training protocols based on the EEG, clinical observation, and response to training

e. Ability to describe equipment characteristics, indications and contraindications for training

3. Preparation for Training. Ability to prepare the patient for training through positioning and adequate instruction.

4. Determination of training duration and intensity

a. Ability to discern when a trainee exhibits limited tolerance for an extended training session

b. Ability to judge the pacing of training sessions on the basis of tolerance and response to the training session

5. Training Administration. Ability to administer neurofeedback training through identification of controls, sequence of operation, and application of all safety rules and precautions.

6. Documentation of Neurofeedback Training. Ability to document training, including immediate and long-term effects of clinical neurofeedback training.

(f) Any occupational therapist or occupational therapy assistant who uses such neurofeedback device shall, upon request of the Board, or the Department, present proof that he or she has obtained the training required by this rule.

Rulemaking Authority 468.203(4), 468.204 FS. Law Implemented 468.203(4) FS. History--New 1-1-88, Formerly 21M-15.001, 61F6-15.001, Amended 12-4-95, Formerly 59R-63.001, Amended 8-9-99, 7-2-00, 4-1-13.

TAB 13 Rule 64B11-5.001(3), F.A.C., Requirements for License Renewal of an Active License; Continuing Education

During the May 2019 meeting, the Board reviewed a complaint from a licensed occupational therapist and Board member regarding the suitability of live webinar courses offered by a Board-approved provider.

Rule 64B11-5.001(3), F.A.C., currently provides as follows: **(3)** At least fourteen (14) of the required hours per biennium must be in person or from interactive, real-time courses. *An interactive, real-time course may be a web-based, satellite transmitted, telephone or video conference, or online instruction program that **allows or requires the licensee to interact in real time, including live chat, with the instructor during the presentation of the program.***

During the November 2019 meeting, the audited provider requested the Board provide a clear interpretation of Rule 64B11-5.001(3), F.A.C. The Board determined to undergo rule development pursuing to address the following through this development:

- May a course be deemed “live, interactive” if the course instructor is *only* available for interaction with participants during the question and answer (Q&A) section, after the core program presentation; or, does the Board intend that the Q&A section is actually to be considered *part of* the program’s learning experience; or
- Whether the Board intends that the instructor must be present throughout the entire program presentation from *start to finish* for the course to be deemed “live, interactive”.

MOTION: After discussion, Mr. Spafford made a motion to **table** the discussion until the next meeting, allowing Board members to provide input after additional research. Questions presented in this discussion included:

- How are other professions and Boards interpreting “live, interactive” continuing education, regarding a course instructor’s availability, during the presentation or question and answer (Q&A) session only?
- How are other current OT Board approved providers interpreting the language and the effects of discussed rule changes *requiring the instructor to be present throughout the entire program presentation from start to finish* for the course to be deemed “live, interactive”.

The motion was seconded by Dr. Banta and carried with a 4/0 vote.

Mr. Spafford moved the Agenda out of order at this time to review the Addendum TAB 27.

ADDENDUM

DISCIPLINARY PROCEEDINGS

REQUEST FOR TERMINATION OF PROBATION

TAB 27. Michael Juzwa, OT 9265, File # 8671, DOH Case # 201003103

Mr. Juzwa was present in the meeting, sworn in by the court reporter and not represented by legal counsel.

Mr. Juzwa petitioned the Board for early termination of probation as imposed by Final Order on October 1, 2012. The Board’s Final Order placed Mr. Juzwa on probation for a period of five (5) years, to be tolled in the event he leaves the State of Florida for a period of thirty (30) days or more, or otherwise does not engage in the active practice of occupational therapy in the State of Florida. Mr. Juzwa stated he has not been able to acquire employment, therefore has not worked as an occupational therapist in the state since the issuance of the Final Order.

The Board discussed with Mr. Juzwa his request, why he has not engaged in active practice and not completed the required five (5) years of probation as required in his Final Order. The Board decided Mr. Juzwa has not completed the requirements as stated in the final order by not engaging in occupational therapy practice, thus not allowing him to be monitored in the practice and denied the request for early termination of probation. The Final Order filed in this matter on October 1, 2012 remains in effect.

MOTION: After discussion, Dr Banta made a motion to **deny** Mr. Juzwa’s request for Termination of Probation. The motion was seconded by Ms. German and carried with a 4/0 vote.

REPORT OF ASSISTANT ATTORNEY GENERAL – Ronald “Tom” Jones

TAB 14 Rule Status Report

- Rule 64B11-4.001, F.A.C., Use of Prescription Devices
- Rule 64B11-5.003, F.A.C., Requirements for Reactivation of an Inactive License
- Rule 64B11-6.001, F.A.C., Continuing Education Program Approval

Mr. Jones provided the Board with the latest Rules activity report per February 2020.

**TAB 15 Office of Fiscal Accountability and Regulatory Reform (OFARR)
Enhanced Oversight of Rulemaking Process**

The Board discussed and indicated when adding the “sunset” provision, to use the language in version one as provided to the Board by Mr. Jones (as copied below) with the following changes: 1) to read “repeal” verses “sunset”, and 2) “90 days” instead of “180 days”.

(x) No later than 90 days prior to December 31, 2024, the Board shall review and amend, modify, or sunset this rule if it determines this rule creates barriers to entry for private business competition, is duplicative, outdated, obsolete, overly burdensome, or imposes excessive costs

MOTION: Mr. Spafford made motion to approve the stated decisions and language revisions stating the Board would consider this each time they were moving forward with rule development. The motion was seconded by Ms. German and carried with a 4/0 vote.

TAB 16 Facebook Disqualification Case

Mr. Jones explained this case scenario to the Board for informational purposes only.

REPORTS, IF ANY

TAB 17 Board Chair, Jim Spafford

Other Board Members

There were no reports from the Board Chair or other members.

TAB 18 Executive Director

- **Cash Balance Report**
- **Expenditures by Function**

These reports were provided for informational purposes.

NEW BUSINESS

TAB 19 2020 Board Officer Elections

2020 Officer Elections

Position	Current Assignment	New Assignments
----------	--------------------	-----------------

	(as of 02/25/2019)	(as of 02/24/2020)
Board Chair	Jim Spafford	Jim Spafford
Vice Chair	Dr. Caylee Banta	Dr. Caylee Banta
CE Committee Person	Dr. Caylee Banta Tameka German (back-up)	Dr. Caylee Banta Tameka German (back-up)
Legislative Liaison	Jim Spafford	Jim Spafford
Budget Liaison	Jim Spafford	Jim Spafford
Unlicensed Activity Liaison	Tameka German	Tameka German
Probable Cause Panel	Judith Johnson Dr. Caylee Banta	Dr. Caylee Banta
Healthy Weight Liaison	Dr. Caylee Banta	Dr. Caylee Banta
Pro Bono CE Approval Liaison:	Elena Vizvary	Elena Vizvary

MOTION: After discussion, Ms. German made a motion to **approve** the same officers for 2020. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

TAB 20 2020 Conviction Records Guidelines

**Florida Board of Occupational Therapy Practice
2020 CONVICTION RECORD GUIDELINES FOR LICENSURE &
EXEMPTION APPLICANTS**

CATEGORY 1		Bad Checks, Municipal Ordinances	
Number of Convictions	Time Elapsed Since Last Conviction	Staff May Clear	Application to Board/Council
One or more conviction(s)	No time factor	Yes	No
CATEGORY 2		All Misdemeanors	
Except those listed under Sections 456.072(1)(ii) and (1)(II), F.S. (2018), which must be referred to the Board Chair for review. (See note 2 below)			
Number of Convictions	Time Elapsed Since Last Conviction	Staff May Clear	Application to Board/Council
One conviction	No time factor	Yes	No
More than one conviction	Less than 5 years	No	Yes
	More than 5 years	Yes	No
CATEGORY 3		DUI	
Number of Convictions	Time Elapsed Since Last Conviction	Staff May Clear	Application to Board/Council
One conviction	Less than 1 year	No	Yes
	More than 1 year	Yes	No
More than one conviction	Less than 5 years	No	Yes
	More than 5 years	Yes	No
CATEGORY 4		Felony Offenses Not Listed in Category 5	

Number of Convictions	Time Elapsed Since Last Conviction	Staff May Clear	Application to Board/Council
One conviction	More than 10 years	Yes	No
More than one conviction	No time factor	No	Yes
CATEGORY 5			
Disqualifying Offenses Defined in Section 456.0635, F.S.			
Number of Convictions	Time Elapsed Since Last Conviction	Staff May Clear	Application to Board/Council
One or more conviction(s)	No time factor	No	Yes

NOTES: (Guidelines remain operative until modified by the Board)

1. In the event staff is uncomfortable with a clearable conviction, the issue will be provided to the Chair to determine if the application needs full board/council review.
2. Category 2 misdemeanors under Section 456.072(1)(ii) and (1)(II), F.S., relate to convictions under the Medicaid program and health care fraud. Refer to the current version of this law when reviewing related criminal history.
3. All disqualifying offenses under Section 456.0635, F.S., require full board review. Refer to the current version of this law when reviewing related criminal history.
4. Driving on a suspended license (DWLS) will not require board/council review.
5. In addition to the guidelines presented above, applications in which criminal court ordered probation is still in effect, may also be prepared for board review.

**The 2019 Florida Statutes
Excerpts from Chapter 456**

456.072(1)(ii) and (II), F.S., Grounds for discipline; penalties; enforcement.

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(ii) Being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, under 18 U.S.C. s. 669, ss. 285-287, s. 371, s. 1001, s. 1035, s. 1341, s. 1343, s. 1347, s. 1349, or s. 1518, or 42 U.S.C. ss. 1320a-7b, relating to the Medicaid program.

(II) Being convicted of or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.

History.—s. 69, ch. 97-261; s. 84, ch. 99-397; s. 90, ch. 2000-160; s. 26, ch. 2000-318; s. 71, ch. 2001-277; s. 2, ch. 2002-254; s. 6, ch. 2003-411; s. 19, ch. 2003-416; s. 10, ch. 2004-344; s. 1, ch. 2005-240; s. 2, ch. 2006-207; s. 111, ch. 2007-5; s. 64, ch. 2008-6; s. 25, ch. 2009-223; s. 3, ch. 2011-112; s. 1, ch. 2011-141; s. 8, ch. 2016-222; ss. 5, 23, ch. 2016-224; s. 6, ch. 2017-41; s. 2, ch. 2018-13; s. 47, ch. 2018-106. **Note.**—Former s. 455.624.

456.0635 Health care fraud; disqualification for license, certificate, or registration.

(1) Health care fraud in the practice of a health care profession is prohibited.

(2) Each board within the jurisdiction of the department, or the department if there is no board, shall refuse to admit a candidate to any examination and refuse to issue a license, certificate, or registration to any applicant if the

candidate or applicant or any principal, officer, agent, managing employee, or affiliated person of the candidate or applicant:

(a) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under chapter 409, chapter 817, or chapter 893, or a similar felony offense committed in another state or jurisdiction, unless the candidate or applicant has successfully completed a pretrial diversion or drug court program for that felony and provides proof that the plea has been withdrawn or the charges have been dismissed. Any such conviction or plea shall exclude the applicant or candidate from licensure, examination, certification, or registration unless the sentence and any subsequent period of probation for such conviction or plea ended:

1. For felonies of the first or second degree, more than 15 years before the date of application.

2. For felonies of the third degree, more than 10 years before the date of application, except for felonies of the third degree under s. 893.13(6)(a).

3. For felonies of the third degree under s. 893.13(6)(a), more than 5 years before the date of application;

(b) Has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a felony under 21 U.S.C. ss. 801-970, or 42 U.S.C. ss. 1395-1396, unless the sentence and any subsequent period of probation for such conviction or plea ended more than 15 years before the date of the application;

(c) Has been terminated for cause from the Florida Medicaid program pursuant to s. 409.913, unless the candidate or applicant has been in good standing with the Florida Medicaid program for the most recent 5 years;

(d) Has been terminated for cause, pursuant to the appeals procedures established by the state, from any other state Medicaid program, unless the candidate or applicant has been in good standing with a state Medicaid program for the most recent 5 years and the termination occurred at least 20 years before the date of the application; or

(e) Is currently listed on the United States Department of Health and Human Services Office of Inspector General's List of Excluded Individuals and Entities.

This subsection does not apply to an applicant for initial licensure, certification, or registration who was arrested or charged with a felony specified in paragraph (a) or paragraph (b) before July 1, 2009.

History.—s. 24, ch. 2009-223; s. 1, ch. 2012-64; s. 15, ch. 2016-230; s. 3, ch. 2017-41.

MOTION: After discussion, Mr. Spafford made a motion to **approve** the 2020 Conviction Record Guidelines as presented. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

TAB 21 2020 Delegation of Authority

Board: Occupational Therapy

DATE: February 24, 2020

The table below represents the Board's official delegation of authority to specific individuals or entities. The intent of the delegation is to facilitate administrative efficiency and to document when individuals or entities have been specifically delegated to act on behalf of the Board.

Situation	Full Board Retains Authority	Delegate Authority to Chair	Delegate Authority to Committee or Liaison	Delegate Authority to Executive Director, Program Administrator or Board Staff	Delegate Authority to Board Counsel
1. Authority to approve applicants and issue a license/temporary permit when the applicant meets all criteria for licensure. Ratified at the next Board meeting.				XX – Board Staff	
2. Authority to apply the Conviction Record Guidelines, approved by the Board, when reviewing applicant criminal history for both licensure and exemptions from disqualification. Exemptions ratified at the next Board				XX – Board Staff	

Situation	Full Board Retains Authority	Delegate Authority to Chair	Delegate Authority to Committee or Liaison	Delegate Authority to Executive Director, Program Administrator or Board Staff	Delegate Authority to Board Counsel
meeting.					
<p>Authority to grant an exemption from disqualification when the criminal history disclosed in the background screening report has been previously reported by the licensee and cleared prior to licensure, or, when a level 1 exemption was previously granted. Does not apply when additional criminal charges are present on the report; in such cases the application will be submitted to Chair or full Board. Ratified at the next Board meeting.</p>				XX – Program Administrator	
3. Authority to review and approve CE providers and medical error courses with ratification at the next Board meeting.			XX – Continuing Education Provider Liaison		
4. Authority to prescribe additional education and training to applicants failing to pass the examination in three attempts pursuant to 468.211(6), F.S.			XX – Continuing Education Provider Liaison		
5. Authority to approve requests for pro bono continuing education credit according to the provisions of Rule 64B11-5.001(15), F.A.C.			XX – Continuing Education Provider Liaison		
6. Authority to grant an exemption from disqualification. Ratified at the next Board meeting.		XX			
7. Authority to review applications, referred by staff, to determine if review by full Board is required.		XX			
8. Authority to require a personal appearance as defined in 456.013(3)(c), F.S.		XX			
9. Authority to require a personal appearance, when necessary, to toll the 15-day time period in which a licensure application must be granted or denied, once the final results of an investigation or prosecution are received, as described in s. 456.013(3)(a), F.S.		XX			
10. Authority to grant continuances.		XX			
11. Authority to approve/reject supervision monitors or continuing education courses required by a Final Order.		XX			

Situation	Full Board Retains Authority	Delegate Authority to Chair	Delegate Authority to Committee or Liaison	Delegate Authority to Executive Director, Program Administrator or Board Staff	Delegate Authority to Board Counsel
12. Authority to change a face-to-face meeting to a conference call, consistent with noticing requirements. This is sometimes done in an emergency when travel would cause hardship, danger and/or a small agenda doesn't warrant travel expenditures.		XX			
13. Authority to determine whether a temporary permit may be granted for applicants requiring full Board review.		XX			
14. Authority to approve reports required by Final Orders when the Order does not specify the report must be reviewed by the full Board.		XX			
15. Authority to require a PRN evaluation.	XX				
16. Authority to sign any and all Board Orders/Notices.				XX – Executive Director	
17. Authority to accept service on behalf of the Board (not individual Board Members).				XX – Executive Director	
18. Authority to accept voluntary relinquishments when no discipline is pending.				XX – Program Administrator	
19. Authority to review and refer legally sufficient petitions for hearing to the Division of Administrative Hearings. Authority to notify petitioners of legally insufficient hearing petitions and their right to cure deficiencies.					XX
20. Authority to review and refer legally sufficient petitions for declaratory statements to the Board. Authority to notify petitioners of the need to submit any required additional information prior to consideration by the Board.					XX
21. Authority to review and refer legally sufficient petitions for variances or waivers to the Board. Authority to notify petitioners of legally insufficient petitions.					XX
22. Authority to make technical changes to proposed rules and respond to JAPC comments, without prior Board review. Substantive changes will be brought to the Board before changes are made.					XX

Situation	Full Board Retains Authority	Delegate Authority to Chair	Delegate Authority to Committee or Liaison	Delegate Authority to Executive Director, Program Administrator or Board Staff	Delegate Authority to Board Counsel
23. Authority to notice rules for development as directed by the Board.					XX
24. Authority to file Notices of Appeal as directed by the Board.					XX

Approved on February 24, 2020. Remains operative until modified by the Board.

Board Chair

MOTION: After discussion, Ms. Vizvary made a motion to **approve** the 2020 Delegation of Authority as presented. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

TAB 22 2021 Proposed Board Meeting Dates

The following dates were presented for the Board’s consideration. The selections were made in coordination with six other professions in the Medical Therapies/Psychology Board Office to avoid meeting conflicts.

General Business and Probable Cause Panel Meetings:

- January 27, 2021
- April 27, 2021
- July 27, 2021
- October 26, 2021

MOTION: After discussion, Dr. Banta made a motion to **approve** the proposed Meeting Dates for 2021 as presented. The motion was seconded by Ms. German and carried with a 4/0 vote.

TAB 23 NBCOT 2020 OT State Regulatory Leadership Forum

After discussion, the Board agreed Ms. German would attend the NBCOT State Regulatory Leadership Forum as the Board’s representative.

OLD BUSINESS

Tab 25 November 4, 2019, General Business Meeting Minutes

MOTION: Mr. Spafford made a motion to approve the November 4, 2019 minutes as presented. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

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

TAB 25 Spotlight on Unlicensed Activity

Presented as an informational item.

TAB 26 Staff Recognition

Presented as informational items.

Mr. Spafford commended the Board Staff's continual excellence, and recognized Ms. Judie Johnson for her many years of dedicated service to the Board, serving as Chair for the Probable Cause Panel.

Ms. Valla thanked the Board for allowing her participation and their work regarding the Neurofeedback rule development. She requested and read for the Board a testimonial letter she recently received from a client regarding the positive impact the use of neurofeedback has had on a minor patient. The Board thanked Ms. Valla for sharing the letter and her contributions to the rule development.

ADJOURNMENT

MOTION: There being no further business, Mr. Spafford made a motion to adjourn the meeting at 11:34 p.m. The motion was seconded by Dr. Banta and carried with a 4/0 vote.