

# The Florida Board of Occupational Therapy Practice

## **MINUTES** **GENERAL BUSINESS MEETING** **MAY 18, 2020**

**CONFERENCE CALL**  
**1-888-585-9008**

When prompted, enter the following conference code number: **564341766**, followed by the “#” sign.



**James Spafford, Board Chair**

**MINUTES**  
**DEPARTMENT OF HEALTH**  
**BOARD OF OCCUPATIONAL THERAPY PRACTICE**  
**GENERAL BUSINESS MEETING**  
**MAY 18, 2020**

**CONFERENCE CALL**  
**1-888-585-9008**

When prompted, enter the following conference code  
number: **564341766**, followed by the “#” sign.

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**

**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, MBA, Chair  
Dr. Caylee Banta, OT, Vice Chair  
Tameka German, OT  
Elena Vizvary, OT

**STAFF PRESENT**

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

**ASSISTANT ATTORNEY GENERAL**

Ronald “Tom” Jones, Board Counsel

**PROSECUTING ATTORNEY**

Zachary Bell, Assistant General Counsel

**COURT REPORTER**

For the Record Court Reporting  
(850) 222-5491  
Fax: (850) 224-5316

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 PROCEEDINGS**

**VOLUNTARY RELINQUISHMENT**

**TAB 1            Ashley Jeanette Albani, OTA, DOH Case # 2019-54530**  
**OTA14873, File # 7928 (PC waived)**

Ms. Albani was not present and not represented by legal counsel.

Mr. Bell presented this case to the Board as a motion for Board's Final Order by Voluntary Relinquishment stating the Respondent was charged with the following allegations: Section 456.072(1)(a)(b)(k)(l)(m)(dd) and Section 468.217(1)(h)(i)(l)(n)(x), Florida Statutes as reported in the Investigative Report. The Respondent executed a Voluntary Relinquishment of Licensure for occupational therapist license number OT 14873, filed with the Agency Clerk.

**MOTION:** Following discussion, Mr. Spafford moved to accept the Voluntary Relinquishment. Ms. German seconded the motion, which carried with a 4/0 vote.

## **PROSECUTOR'S REPORT**

### **TAB 2 Zachary Bell, Prosecuting Attorney**

Mr. Bell presented the Prosecutor's Report outlining the current status of 29 open/active disciplinary cases.

**DOH/PROSECUTOR'S REPORT**  
**BOARD OF OCCUPATIONAL THERAPY MEETING**  
**Meeting Date May 18, 2020**

TO: Allen Hall, Executive Director  
FROM: Zachary Bell, Assistant General Counsel  
DATE: April 6, 2020  
RE: Current Open / Pending Occupational Therapy Cases

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Total Cases open/active in PSU:	29
Cases in EAU:	1
Cases under legal review:	14
Cases where PC Recom made:	5
Total Cases where PC has been found:	10
Cases in holding status:	0
Cases pending before DOAH:	0
Cases Agendaed for Board:	6
Cases on Appeal:	0
Year Old Cases:	20

**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.

## **APPLICANT RATIFICATION LISTS**

### **TAB 3 Licensed Occupational Therapists**

**MOTION:** Mr. Spafford moved to approve the ratification list of 243 Occupational Therapist applicants for licensure. The motion was seconded by Mrs. German and carried with 4/0 vote.

**ACTION TAKEN:** 243 Occupational Therapists ratified for licensure.

### **TAB 4 Licensed Occupational Therapy Assistants**

**MOTION:** Mr. Spafford moved to approve the ratification list of 122 Occupational Therapy Assistants applicants for licensure. The motion was seconded by Mrs. German and carried with 4/0 vote.

**ACTION TAKEN:** 122 Occupational Therapy Assistants ratified for licensure.

#### **TAB 5 Continuing Education Provider Applications**

**MOTION:** Mr. Spafford moved to approve the list of 24 continuing education providers including Prevention of Medical Errors, Florida Laws and Rules and Human Trafficking courses and provider applicants for licensure. The motion was seconded by Elena Vizvary and carried with a 4/0 vote.

**ACTION TAKEN:** 24 continuing education providers ratified for licensure.

### **ADMINISTRATIVE PROCEEDINGS**

#### **HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT**

##### **TAB 6 Precision Rehability Group, CE Provider # 50-24659 Course: Hemp Derived CBD in the Healthcare Setting, Course No. 20-674149**

Dr. Collier was present on the call and not presented by legal counsel.

During the November 2019 meeting, the Board considered Precision Rehability 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 Rehability Group, was not present 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.

At the February 24, 2020 meeting 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. The Board moved 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.

Dr. Banta and Dr. Collier had the opportunity to discuss the course prior to the instant meeting. Dr. Banta explained it was clarified the course's relevance to the practice of occupational therapy is precededented on educating the therapist regarding the effects CBD oil might have on a patient's functionalities. Knowledge of these effects might be informative to the therapist's assessment and treatment plan.

**MOTION:** After discussion, Dr. Banta made a motion to approve the providership application of Precision Rehability Group, CE Provider #50-24659 and the course Hemp Derived CBD Oil in the Healthcare Setting, Course #20-674149. The motion was seconded by Ms. German and carried with a 4/0 vote.

Mr. Spafford inquired when the provider might begin offering the course. Mr. Jones stated the provider can offer the course after the Board's order has been issued and filed. The provider will receive a copy of the filed order.

## **RULES REVIEW AND DEVELOPMENT**

### **TAB 7            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 64B19-5.001(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 this section. After further discussion, the Board determined to undergo rule development. The Board seeks 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".

During the February 24, 2020 meeting, the Board discussed and moved to table the discussion until the next meeting, allowing Board members to provide input after additional research.

Provided for the Board's review were the previously reviewed materials, research prepared by Ms. Vizvary and the following draft rule language prepared by Board Counsel.

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

**(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 or in a question and answer session upon completion of the program.**

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

**MOTION:** Mr. Spafford made a motion that the proposed rule amendments would not likely directly or indirectly increase regulatory to any entity including government costs in excess of \$200,000 in Florida within one year 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. The motion was seconded by Ms. German and carried with a 4/0 vote.

**MOTION:** Mr. Spafford made a motion there should not be a provision to sunset the proposed language. The motion was seconded by Ms. German and carried with a 4/0 vote.

## **TAB 8            Rule 64B11-4.003, F.A.C., Standards of Practice; Discipline**

On April 24, 2020 Mr. Jones received a letter from the Joint Administrative Procedures Committee (JAPC) regarding their disciplinary guidelines review, indicating a response deadline of May 8, 2020. Counsel provided an interim response to JAPC and worked with Mr. Bell to present the following proposed updates to the disciplinary guidelines for the Board's review and advisement.

### **Proposed Rule Text**

#### **64B11-4.003 Standards of Practice; Discipline.**

(1) Purpose. ~~The legislature created the Board to assure protection of the public from persons who do not meet minimum requirements safe practice or who pose a danger to the public. Pursuant to Section 456.079, F.S., the Board provides within this rule disciplinary guidelines which shall be imposed upon applicants or licensees whom it regulates under Part III, Chapter 468, F.S.~~ The purpose of this rule is to notify applicants and licensees of the ranges of penalties which will routinely be imposed unless the Board finds it necessary to deviate from the guidelines for the stated reasons given within this rule. Each range includes the lowest and highest penalty and all penalties falling between. The purposes of the imposition of discipline are to punish the applicants or licensees for violations and to deter them from future violations; to offer opportunities for rehabilitation, when appropriate; and to deter other applicants or licensees from violations.

(2) Among the range of ~~punishments~~ discipline including any and all in Section 456.072(2), F.S., in increasing severity are:

(a) Letter of concern and a minimum administrative fine of \$100, remedial education, and/or refund of fees billed.

(b) Probation with conditions to include limitations on the type of practice or practice setting, requirements of supervision, employer and self reports, periodic appearances before the Board, counseling or participation in the Professionals Resource Network (PRN), payment of administrative fines, and such conditions to assure protection of the public. The licensee may must choose any a licensed health care professional supervisor licensed under Chapter 468, Part III, Florida Statutes who is in good standing and without restriction or limitation on his or her license to be a supervisor. The supervisor should ideally provide such services without compensation. However, the licensee may contract with a for-profit entity for a fee. It is the licensee's full responsibility to pay for any supervision services. All potential supervisors must be approved by the Board before providing services. The Board Chair, or any other member designated by the Board, is delegated the authority to review all potential supervisors for adequacy. The Board may reject any proposed supervisor on the basis that he or she has previously been subject to disciplinary action against his or her license in this or any other jurisdiction, is currently under investigation, or is the subject of a pending disciplinary action. The supervisor must be actively engaged in the same or similar specialty area unless otherwise provided by the Board and be practicing within a

reasonable distance of Respondent's practice, a distance of 50 miles unless otherwise specifically approved by the Board. The Board may reject any proposed supervisor for good cause shown.

(c) Suspension until the licensee appears before the Board to demonstrate current competency and ability to practice safely and compliance with any previous Board orders.

(d) Licensure with conditions.

(e) Denial of licensure.

(f) Permanent Revocation.

(3) Aggravating and Mitigating Circumstances. Based upon consideration of aggravating and mitigating factors present in an individual case, the Board may deviate from the penalties recommended below. The Board shall consider as aggravating or mitigating factors the following:

(a) Exposure of patients or public to injury or potential injury, physical or otherwise; none, slight, severe, or death;

(b) Legal status at the time of the offense; no restraints, or legal constraints;

(c) The number of counts or separate offenses established;

(d) The disciplinary history of the applicant or licensee in any jurisdiction and the length of practice;

(e) Pecuniary benefit or self-gain inuring to the applicant or licensee;

(f) Any efforts at rehabilitation, attempts by the licensee to correct or to stop violations, or refusal by the licensee to correct or to stop violations;

~~(g) Any other relevant mitigating or aggravating factors~~ Evidence of fraud.

(4) Violations and Range of Penalties. In imposing discipline upon applicants and licensees, in proceedings pursuant to Sections 120.57(1) and (2), F.S., the Board shall act in accordance with the following disciplinary guidelines and shall impose a penalty within the range corresponding to the violations set forth below. The verbal identification of offenses are descriptive only; the full language of each statutory provision cited must be consulted in order to determine the conduct included. For applicants, any and all offenses listed herein are sufficient for refusal to certify an application for licensure.

In addition to the penalty imposed, the Board shall recover the costs of investigation and prosecution of the case. Additionally, if the Board makes a finding of pecuniary benefit or self-gain related to the violation, then the Board shall require refund of fees billed and collected from the patient or a third party on behalf of the patient.

VIOLATION	PENALTY RANGE	
	MINIMUM	MAXIMUM
<p><b>(a) Attempting to obtain, <del>obtaining,</del> or renewing a license <del>or certificate</del> to practice a profession by bribery, <del>fraud</del> <u>fraudulent misrepresentation</u>, or through an error of the Department or the Board.</b>  <b>(Sections 468.217(1)(a), and 456.072(1)(h), F.S.)</b></p>		
First Offense	<del>Revocation with ability to reapply</del> <u>6 months probation with conditions or certify application with restrictions</u> and \$1,000 fine.	Revocation and \$3,000 fine.
Second <u>and Subsequent Offenses</u>	<del>Revocation</del> <u>Restriction of practice or license or denial of licensure with ability to reapply</u> and \$3,000 <u>\$5,000</u> fine.	<u>Permanent Revocation or denial of licensure with no ability to reapply</u> and \$10,000 fine.
Third Offense	<del>Revocation with ability to reapply</del> and \$6,000 fine.	<del>Revocation with no ability to reapply</del> and \$10,000 fine.

However, if the violation is not through an error but is for making a false or fraudulent representation or bribery, the fine is increased to \$10,000 per count or offense.

**(b) Action taken against license by another**

**jurisdiction.**

**(Sections 468.217(1)(b), and 456.072(1)(f), F.S.)**

First Offense	<del>Imposition of discipline which would have been if the substantive violation occurred in Florida</del> <u>Letter of concern</u> and \$100 fine.	<u>Permanent</u> <del>Re</del> vocation.
Second <u>and Subsequent</u> Offenses	<del>Imposition of discipline which would have been if the substantive violation occurred in Florida</del> <u>1 year suspension</u> and a \$1,000 fine.	<u>Permanent</u> <del>Re</del> vocation <u>and</u> <u>\$10,000 fine.</u>
Third Offense	<del>Revocation and \$10,000 fine.</del>	

**(c) Guilt of a crime directly relating to practice or ability to practice.**

**(Section 468.217(1)(c), F.S.)**

First Offense	6 months probation with conditions and \$1,000 fine.	<u>Permanent</u> <del>Re</del> vocation and \$5,000 fine.
Second <u>and Subsequent</u> Offenses	1 year suspension and \$5,000 fine.	<u>Permanent</u> <del>Re</del> vocation and \$10,000 fine.

**(d) False, deceptive, or misleading advertising.**

**(Section 468.217(1)(d), F.S.)**

First Offense	<del>Reprimand</del> <u>Letter of concern</u> and <u>\$100 fine.</u>	<del>6 months suspension</del> <u>probation with conditions</u> and \$250 fine.
Second <u>and Subsequent</u> Offenses	6 months suspension and <del>\$250</del> <u>\$500</u> fine.	<del>9 months suspension</del> <u>Restriction of practice or license</u> and <del>\$500</del> <u>\$5,000</u> fine.
Third Offense	<del>9 months suspension and \$500 fine.</del>	<del>1 year suspension and \$5,000 fine.</del>

**(e) Advertising, practicing under a name other than one's own name.**

**(Section 468.217(1)(e), F.S.)**

First Offense	<del>Reprimand</del> <u>Letter of concern</u> and <u>\$100 fine.</u>	<del>6 months suspension</del> <u>probation with conditions</u> and \$250 fine.
Second <u>and Subsequent</u> Offenses	6 months suspension and <del>\$250</del> <u>\$500</u> fine.	<del>9 months suspension</del> <u>Restriction of practice or license</u> and <del>\$500</del> <u>\$5,000</u> fine.
Third Offense	<del>9 months suspension and \$500 fine.</del>	<del>1 year suspension and \$5,000 fine.</del>

**(f) Failure to report another licensee in violation.**



**(Sections 468.217(1)(f), and 456.072(1)(i), F.S.)**

First Offense

~~Reprimand~~ Letter of concern and \$100 fine.

~~Reprimand~~ 6 months probation with conditions and \$500 fine.

Second and Subsequent Offenses

~~Reprimand~~ 6 months probation with conditions and ~~\$500~~ \$1,000 fine.

~~6 months probation with conditions~~ 1 year suspension and ~~\$1,000~~ \$5,000 fine.

Third Offense

~~6 months probation with conditions and \$1,000 fine.~~

~~6 months probation with conditions and \$5,000 fine.~~

**(g) Aiding unlicensed practice.**

**(Sections 468.217(1)(g), and 456.072(1)(j), F.S.)**

First Offense

1 year probation with conditions and \$1,000 fine.

6 months suspension, 1 year probation with conditions and \$3,000 fine.

Second and Subsequent Offenses

~~6 months~~ 1 year suspension, ~~1 year probation with conditions and \$6,000 fine.~~

~~1 year suspension, 2 years probation with conditions~~ Permanent revocation and ~~\$6,000~~ \$10,000 fine.

Third Offense

~~1 year suspension, 2 years probation with conditions and \$6,000 fine.~~

~~Revocation and \$10,000 fine.~~

**(h) Failure to perform legal obligation.**

**(Sections 468.217(1)(h), and 456.072(1)(k), F.S.)**

First Offense

Letter of Concern and \$100 fine.

6 months probation with conditions and ~~\$100~~ \$500 fine, ~~unless otherwise provided by the law.~~

Second and Subsequent Offenses

~~6 months probation with conditions suspension and \$100~~ \$1,000 fine.

~~6 months suspension, 1 year probation with conditions~~ Restriction of practice or license and ~~\$1,000~~ \$5,000 fine, ~~unless otherwise provided by the law.~~

Third Offense

~~6 months suspension, 1 year probation with conditions and \$500 fine.~~

~~Revocation and \$5,000 fine.~~

**(i) Failing to file a report as required.**

**(Sections 468.217(1)(i), and 456.072(1)(l), F.S.)**

First Offense

1 year probation with conditions and \$100 fine.

6 months suspension, 1 year probation with conditions and \$250 fine.

Second and Subsequent Offenses

6 months suspension, 1 year probation with conditions and ~~\$250~~ \$500 fine.

~~Revocation~~ Restriction of practice or license and \$1,000 fine.

Third Offense

~~1 year suspension, 2 years probation with conditions and \$1,000 fine.~~

~~Revocation and \$10,000 fine.~~

However, if the violation is for making a false or fraudulent representation, a fine of \$10,000 per count or offense.

**(j) Kickbacks or split fee arrangements.**

**(Section 468.217(1)(j), F.S.)**

First Offense	6 months suspension, 1 year probation with conditions and \$500 fine.	<del>Revocation</del> <u>1 year suspension, 2 years probation with conditions and \$5,000 fine.</u>
Second <u>and Subsequent</u> Offenses	<del>1 year suspension, 2 years probation with conditions</del> <u>Restriction of practice or license and \$1,000</u> <del>\$2,500</del> fine.	<u>Permanent</u> <del>Revocation</del> and <del>\$8,000</del> <u>\$10,000</u> fine.
Third Offense	<del>2 years suspension, 3 years probation with conditions and \$2,500 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<b>(k) Exercising influence to engage patient in sex. (Section 468.217(1)(k), F.S.)</b>		
First Offense	1 year suspension, 4 years probation with conditions and referral to PRN and \$5,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$7,500 fine.
Second <u>and Subsequent</u> Offenses	<del>Revocation</del> <u>Restriction of practice or license</u> and \$7,500 fine.	<u>Permanent</u> <del>Revocation</del> and \$10,000 fine.
<b>(l) Deceptive, untrue, or fraudulent representations in the practice. (Sections 468.217(1)(l), and 456.072(1)(a), F.S.)</b>		
First Offense	1 year probation with conditions and \$10,000 fine.	1 year suspension, 1 year probation with conditions and \$10,000 fine.
Second <u>and Subsequent</u> Offenses	<del>1</del> <u>2</u> years suspension, 1 year probation with conditions and \$10,000 fine.	<del>Revocation</del> and \$10,000 fine.
Third Offense	<del>2 years suspension, 2 years probation with conditions and \$10,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<b>(m) Improper solicitation of patients. (Section 468.217(1)(m), F.S.)</b>		
First Offense	1 year probation with conditions and \$500 fine.	6 months suspension, 1 year probation with conditions and \$2,000 fine.
Second <u>and Subsequent</u> Offenses	<del>6 months suspension, 1 year probation with conditions</del> <u>Restriction of practice or license and \$1,500</u> <del>\$2,500</del> fine.	<del>1 year suspension, 2 years probation with conditions</del> <u>Permanent revocation</u> and \$5,000 fine.
Third Offense	<del>1 year suspension, 2 years probation with conditions and \$3,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<b>(n) Failure to keep written medical records, justifying the course of treatment of the patient, including but not limited to patient history, examination results and test results. (Section 468.217(1)(n), F.S.)</b>		
First Offense	<del>Reprimand</del> <u>Letter of concern</u> and \$300 fine.	<del>Reprimand</del> <u>6 months probation with conditions</u> and \$1,000 fine.
Second <u>and Subsequent</u> Offenses	<del>Reprimand</del> 1 year probation and \$1,000 fine.	6 months suspension, 1 year probation with conditions and

		\$5,000 fine.
Third-Offense	<del>6 months suspension, 1 year probation with conditions and \$3,000 fine.</del>	<del>1 year suspension, 2 years probation with conditions and \$10,000 fine.</del>
<b>(o) Exercising influence on patient for financial gain.</b>		
<b>(Sections 468.217(1)(o), and 456.072(1)(n), F.S.)</b>		
First Offense	1 year probation with conditions and \$1,000 fine.	1 year suspension, 2 years probation with conditions and \$7,500 fine.
Second <u>and Subsequent</u> Offenses	<del>Revocation</del> <u>Restriction of practice or license</u> and \$5,000 fine.	<del>Permanent</del> <u>Revocation</u> and \$10,000 fine.
<b>(p) Performing professional services not authorized by patient.</b>		
<b>(Section 468.217(1)(p), F.S.)</b>		
First Offense	<del>Reprimand</del> <u>Letter of concern</u> and \$500 fine.	<del>Reprimand</del> <u>6 months probation with conditions</u> and \$1,000 fine.
Second <u>and Subsequent</u> Offenses	<del>Reprimand</del> <u>1 year probation with conditions</u> and \$1,000 \$2,500 fine.	<del>6 months probation with conditions</del> <u>Restriction of practice or license</u> and \$10,000 fine.
Third-Offense	<del>6 months probation with conditions and \$3,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<b>(q) Malpractice.</b>		
<b>(Section 468.217(1)(q), F.S.)</b>		
First Offense	1 year probation with conditions and \$1,000 fine.	1 year suspension, 2 years probation with conditions or denial and \$5,000 fine.
Second <u>and Subsequent</u> Offenses	1 year suspension, 2 years probation with conditions and \$5,000 fine.	<del>Permanent</del> <u>Revocation</u> and \$10,000 fine.
<b>(r) Performing of experimental treatment without informed consent.</b>		
<b>(Section 468.217(1)(r), F.S.)</b>		
First Offense	1 year suspension, 1 year probation with conditions and \$1,000 fine.	2 years suspension, 2 years probation with conditions or denial and \$5,000 fine.
Second <u>and Subsequent</u> Offenses	<del>Revocation</del> <u>Restriction of practice or license</u> and \$5,000 fine.	<del>Permanent</del> <u>Revocation</u> and \$10,000 fine.
<b>(s) Practicing beyond scope permitted.</b>		
<b>(Sections 468.217(1)(s), and 456.072(1)(o), F.S.)</b>		
First Offense	<del>Reprimand</del> <u>Letter of concern</u> and \$100 fine.	6 months suspension, 6 months probation with conditions or denial and \$1,500 fine.
Second <u>and Subsequent</u> Offenses	<del>6 months suspension, 6 months probation with conditions</del> <u>Restriction of practice or license</u> and \$1,500 fine.	<del>1 year suspension, 1 year probation with conditions</del> <u>Permanent revocation</u> and \$7,500 fine.
Third-Offense	<del>1 year suspension, 1 year probation</del>	<del>Revocation and \$10,000 fine.</del>

	<del>with conditions and \$3,000 fine.</del>	
<b>(t) Inability to practice occupational therapy with skill and safety.</b> <b>(Sections 468.217(1)(t), 456.072(1)(z), F.S.)</b>		
First Offense	Submit to mental/physical examination and impose conditions on practice.	Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions.
Second <u>and Subsequent</u> Offenses	Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions.	<del>Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions, and \$3,000 fine.</del> <u>Permanent revocation and \$5,000 fine.</u>
Third Offense	<del>Submit to mental/physical examination, suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions, and \$3,000 fine.</del>	<del>Revocation and \$5,000 fine.</del>
<b>(u) Delegation of professional responsibilities to unqualified person.</b> <b>(Sections 468.217(1)(u), 456.072(1)(p), F.S.)</b>		
First Offense	1 year probation with conditions and \$1,000 fine.	6 months suspension, 1 year probation with conditions and \$3,000 fine.
Second <u>and Subsequent</u> Offenses	<del>6 months suspension, 1 year probation with conditions</del> <u>Restriction of practice or license and \$3,000 \$5,000 fine.</u>	<del>1 year suspension, 2 years probation with conditions</del> <u>Permanent revocation and \$6,000 \$10,000 fine.</u>
Third Offense	<del>1 year suspension, 2 years probation with conditions and \$6,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<b>(v) Violation of order, or failure to comply with subpoena.</b> <b>(Sections 468.217(1)(v), 456.072(1)(q), F.S.)</b>		
First Offense	Suspension until order or subpoena complied with and \$500 fine.	<del>Revocation</del> <u>1 year suspension, 1 year probation with conditions and \$1,500 fine.</u>
Second <u>and Subsequent</u> Offenses	6 months suspension, 1 year probation with conditions and \$1,500 fine.	<u>Permanent</u> <del>Revocation</del> and \$5,000 fine.
<b>(w) Conspiring to restrict another from lawfully advertising services.</b> <b>(Section 468.217(1)(w), F.S.)</b>		
First Offense	<del>Reprimand</del> <u>Letter of concern.</u>	<del>Reprimand</del> <u>Letter of concern and</u>

		\$100 fine.
Second and Subsequent Offenses	<del>Reprimand</del> Letter of concern and \$100 <del>\$500</del> fine.	<del>Reprimand</del> Letter of concern and \$500 <del>\$1,000</del> fine.
Third Offense	<del>Reprimand and \$500 fine.</del>	<del>Reprimand and \$1,000 fine.</del>
<b>(x) Violating Chapters 468, 456, F.S., or any rules adopted pursuant thereto. (Sections 468.217(1)(x), Part III, and 456.072(1)(dd), F.S.)</b>		
First Offense	Suspension until law or rule complied with and \$500 fine.	<del>Revocation</del> <u>1 year suspension, 1 year probation with conditions</u> and \$1,500 fine.
Second and Subsequent Offenses	<del>6 months suspension, 1 year probation with conditions and \$1,500 fine</del> <u>Restriction of practice or license</u> and \$1,500 <del>\$2,500</del> fine.	<u>Permanent</u> <del>Revocation</del> and \$5,000 fine.
<b>(y) Performing or attempting health care services on the wrong patient, wrong site wrong procedure, or unauthorized or medically unnecessary procedure including preparation of the patient. (Section 456.072(1)(bb), F.S.)</b>		
First Offense	1 year probation with conditions and \$1,000 fine.	1 year suspension, 2 years probation with conditions and \$5,000 fine.
Second and Subsequent Offenses	<del>1 year suspension, 2 years probation with conditions</del> <u>Restriction of practice or license</u> and \$5,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$10,000 fine.
<b>(z) Intentionally violating any rule adopted by the Board or the Department as appropriate. (Section 456.072(1)(b), F.S.)</b>		
First Offense	6 months suspension, 1 year probation with conditions and \$1,000 fine.	1 year suspension, 2 years probation with conditions and \$3,000 fine.
Second and Subsequent Offenses	<u>Restriction of practice or license and \$5,000 fine.</u>	<u>Permanent</u> <del>revocation</del> and \$10,000 fine.
<b>(aa) Being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice a licensee's profession. (Section 456.072(1)(c), F.S.)</b>		
First Offense	6 months probation with conditions and \$1,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$5,000 fine.
Second and Subsequent Offenses	<del>1 year suspension</del> <u>Restriction of practice or license</u> and \$5,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$10,000 fine.
<b>(bb) Failing to comply with the educational course requirements for human</b>		

**immunodeficiency virus and acquired immune deficiency syndrome.**

**(Section 456.072(1)(e), F.S.)**

First and Subsequent Offenses

Letter of Concern.

6 months probation with conditions and \$500 fine.

**(cc) Having been found liable in a civil proceeding for knowingly filing a false report or complaint with the department against another licensee.**

**(Section 456.072(1)(g), F.S.)**

First Offense

1 year probation with conditions and \$1,000 fine.

~~6 months suspension, 1 year probation with conditions~~ 1 year suspension and \$5,000 fine.

Second and Subsequent Offenses

~~6 months suspension, 1 year probation with conditions~~ Restriction of practice or license and \$2,000 fine.

~~1 year suspension, 2 years probation with Conditions~~ Permanent revocation and \$10,000 fine.

Third Offense

~~1 year suspension, 2 years probation with conditions and \$4,000 fine.~~

~~Revocation and \$10,000 fine.~~

**(dd) Making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.**

**(Section 456.072(1)(a) and (m), F.S.)**

First Offense

1 year probation with conditions and \$10,000 fine.

1 year suspension, ~~1 year probation with conditions and \$10,000 fine.~~

Second and Subsequent Offenses

~~1 year suspension, 1 year probation with conditions~~ Restriction of practice or license and \$10,000 fine.

Permanent Revocation and \$10,000 fine.

Third Offense

~~2 years suspension, 2 years probation with conditions and \$10,000 fine.~~

~~Revocation and \$10,000 fine.~~

**(ee) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding.**

**(Section 456.072(1)(r), F.S.)**

First Offense

6 months probation with conditions and \$1,000 fine.

~~6 months suspension, 1 year probation with conditions~~ 1 year suspension and \$2,000 fine.

Second and Subsequent Offenses

~~6 months suspension, 1 year probation with conditions~~ Restriction of practice or license and ~~\$2,000~~ \$4,000 fine.

~~1 year suspension, 1 years probation with conditions~~ Permanent revocation and ~~\$5,000~~ \$10,000 fine.

Third Offense

~~1 year suspension, 2 years probation with conditions and \$4,000 fine.~~

~~Revocation and \$10,000 fine.~~

**(ff) Engaging or attempting to engage a patient in verbal or physical sexual activity.**

**(Section 456.072(1)(v), F.S.)**

First Offense	1 year suspension, 4 years probation with conditions referral to PRN and \$5,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$7,500 fine.
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Second <u>and Subsequent</u> Offenses	<u>Permanent</u> <del>Revocation</del> and \$7,500 fine.	<u>Permanent</u> <del>Revocation</del> and \$10,000 fine.
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**(gg) Failing to report to the board within 30 days after the licensee has been convicted or found guilty of, or entered a plea of no contendere to, regardless of adjudication, a crime in any jurisdiction.**

**(Section 456.072(1)(x), F.S.)**

First Offense	<del>Reprimand</del> Letter of concern <u>and</u> <u>\$500 fine.</u>	<del>6 months suspension,</del> 1 year probation with conditions and \$500 fine.
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Second <u>and Subsequent</u> Offenses	<del>6 months suspension,</del> 1 year probation with conditions and <u>\$500 \$1,000 fine.</u>	<del>1 year suspension,</del> 2 years probation with <u>Conditions</u> <u>Permanent revocation</u> and <u>\$1,000 \$5,000 fine.</u>
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Third Offense	<del>1 year suspension,</del> 2 years probation with conditions and <u>\$1,000 fine.</u>	<del>Revocation and \$5,000 fine.</del>
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**(hh) Using information about people involved in motor vehicle accidents which has been derived from accident reports made by law enforcement officers for the solicitation of the people involved in the accidents.**

**(Section 456.072(1)(y), F.S.)**

First Offense	1 year probation with conditions and \$1,000 fine.	<del>6 months suspension,</del> 1 year probation with conditions 1 year suspension and \$4,000 fine.
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Second <u>and Subsequent</u> Offenses	<del>6 months suspension,</del> 2 years probation with conditions <u>Restriction of practice or license</u> and <u>\$2,000 \$4,000 fine.</u>	<del>1 year suspension,</del> 2 years probation with conditions <u>Permanent revocation</u> and <u>\$7,500 \$10,000 fine.</u>
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Third Offense	<del>1 year suspension,</del> 2 years probation with conditions and <u>\$4,000 fine.</u>	<del>Revocation and \$10,000 fine.</del>
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**(ii) Failing to finish PRN treatment program or failing without just cause to comply with PRN contract.**

**(Section 456.072(1)(hh), F.S.)**

First Offense	Suspension until compliant with program; up to suspension until compliant with program, followed by up to 5 years probation with conditions.
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Second or Subsequent Offense	Up to \$2,000 fine, suspension until compliant with program followed by up to 5 years probation with conditions, or revocation.
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**(jj) 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.**

**(Section 456.072(1)(ii), F.S.)**

First and Subsequent Offenses

Permanent ~~Re~~vocation and a fine of \$10,000, or in the case of application for licensure, denial of license.

**(kk) Failing to remit the sum owed to the State for an overpayment from the Medicaid Program pursuant to a final order, judgment, or Stipulation or settlement.**

**(Section 456.072(1)(jj), F.S.)**

First Offense

~~Letter of concern, 6 months probation with conditions and a fine of \$500 fine.~~

~~Probation and a fine of 1 year suspension and \$2,500 fine.~~

Second and Subsequent Offenses

~~Reprimand and a fine of \$2,500 1 year suspension and \$3,000 fine.~~

~~Reprimand, probation and a fine of Permanent revocation and \$5,000 fine.~~

Third Offense

~~Suspension and a fine of \$5,000.~~

~~Revocation and a fine of \$5,000.~~

**(ll) Being terminated from the state Medicaid Program pursuant to Section 409.913, F.S., any other state Medicaid program, or the federal Medicare program, unless eligibility to participate in the program from which the practitioner was terminated has been restored.**

**(Section 456.072(1)(kk), F.S.)**

First Offense

~~Letter of concern and a fine of \$1,000 fine.~~

~~Probation and a fine of 1 year suspension and \$1,000 \$2,500 fine.~~

Second and Subsequent Offenses

~~Probation and a fine of \$1,000 1 year suspension and \$5,000 fine.~~

~~Suspension and a fine of Permanent revocation and \$5,000 10,000 fine.~~

Third Offense

~~Suspension and a fine of \$5,000.~~

~~Revocation and a fine of \$10,000.~~

**(mm) 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 related to health care fraud.**

**(Section 456.072(1)(ll), F.S.)**

First and Subsequent Offenses

Permanent ~~Re~~vocation and a fine of \$10,000, or in the case of application for licensure, denial of license.



**(nn) Willfully failing to comply with Section 627.64194 or 641.513, F.S., with such frequency as to indicate a general business practice.**

**(Section 456.072(1)(oo), F.S.)**

First Offense	Letter of Concern and \$500 fine.	<del>6 months probation with conditions</del> <u>1 year suspension</u> and \$1,000 fine.
Second <u>and Subsequent</u> Offenses	<del>Reprimand</del> <u>1 year suspension</u> and \$3,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$5,000 fine.
<del>Third Offense</del>	<del>Reprimand and \$5,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>

**(oo) Testing positive for any drug on confirmed preemployment or employer ordered drug screening without lawful prescription.**

**(Section 456.072(1)(aa), F.S.)**

First Offense	Submit to mental/physical examination and impose conditions on practice.	Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions.
Second <u>and Subsequent</u> Offenses	Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions <u>and \$1,000 fine.</u>	<del>Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions,</del> <u>Permanent revocation</u> and <del>\$3,000</del> \$5,000 fine.
<del>Third Offense</del>	<del>Submit to mental/physical examination, suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation, and \$3,000 fine.</del>	<del>Revocation and \$5,000 fine.</del>

(5) Stipulations or Settlements. The provisions of this rule are not intended and shall not be construed to limit the ability of the Board to dispose informally of disciplinary actions by stipulation, agreed settlement, or consent order pursuant to Section 120.57(4), F.S.

(6) Letters of Guidance. The provisions of this rule cannot and shall not be construed to limit the authority of the probable cause panel of the Board to direct the Department to send a letter of guidance pursuant to Section 456.073(3), F.S., in any case for which it finds such action appropriate.

(7) Other Action. The provisions of this rule are not intended to and shall not be construed to limit the ability of the Board to pursue or recommend that the Department pursue collateral civil or criminal actions when appropriate.

*Rulemaking Authority 456.079, 468.204 FS. Law Implemented 456.072, 456.079, 468.217 FS. History—New 9-12-88, Amended 11-9-92, Formerly 21M-15.002, 61F6-15.002, 59R-63.002, Amended 1-27-00, 12-27-01, 12-27-05, 4-10-08, 8-5-10, 4-18-12, 1-10-17.*

After Board discussion, Mr. Jones requested if there were any public comments on the proposed Rule language at this time. None was heard.

**MOTION:** Mr. Spafford made a motion to approve the proposed rule language with the modifications presented and discussed. 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. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

**MOTION:** Mr. Spafford made a motion that the proposed amendments would not likely directly or indirectly increase regulatory to any entity including government costs in excess of \$200,000 in Florida within one year 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. The motion was seconded by Ms. German and carried with a 4/0 vote.

**MOTION:** Mr. Spafford moved there should not be a provision to sunset the proposed language. The motion was seconded by Ms. German and carried with a 4/0 vote.

Mr. Jones advised the Board there may be further questions by JAPC and requested the Board Chair's assistance and advisement. Mr. Spafford agreed to work with Mr. Jones and thanked him and Mr. Bell for their diligence and extensive work on this project.

## **REPORT OF ASSISTANT ATTORNEY GENERAL – Ronald “Tom” Jones**

### **TAB 9 Rule Status Report**

- Rule 64B11-4.001, F.A.C., Use of Prescription Devices
- Rule 64B11-6.001, F.A.C., Continuing Education Program Approval

Mr. Jones provided the Board with the latest rules' activity report per April 2020.

### **TAB 10 Discussion of the 2020-21 Annual Regulatory Plan**

Mr. Jones stated to the Board the Annual Regulatory Plan is currently in the process of being developed and should be presented at the next Board Meeting.

## **REPORTS, IF ANY**

### **TAB 11 Board Chair, Jim Spafford**

Mr. Spafford stated, regarding the COVID-19 pandemic, his thanks and appreciation and how grateful he is for the commendable and praiseworthy work of the practitioner members of the Board and all others in the occupational therapy profession during these incredibly challenging and difficult times.

### **Other Board Members**

There were no reports from other members.

### **TAB 12 Executive Director**

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

These reports were provided for informational purposes.

## **NEW BUSINESS**

### **TAB 13          2020 Legislation**

#### **HB 713 - Health Regulation**

Mr. Hall provided an informational overview on HB 713 (2020) pending signature by the Governor. Mr. Hall noted sections 11 and 12 of the bill remove provisions that require the Department of Health and the various Boards to suspend the licenses of health care practitioners who default on Federal student loans.

#### **HB 115 - Keep Our Graduates Working Act**

Mr. Hall provided an informational overview on HB 115 (2020) pending signature by the Governor. Mr. Hall explained the specific impact of these changes require an updated question on the licensure application removing penalties resulting from defaulting on Federal student loans.

***At this time Mr. Spafford moved the agenda out of order to Tab 16.***

## **ADDENDUM**

### **TAB 16          Rule 64B11-2.003, F.A.C., Fees; Application**

#### **Rule 64B11-2.003, F.A.C., Fees; Application**

The proposed rule incorporates a revised licensure application reflecting changes required by HB 115 (2020). The 456.0635 History Section of the application has been updated to ask the question below.

*Are you currently listed on the United States Department of Health and Human Services' Office of the Inspector General's List of Excluded Individuals and Entities (LEIE)?* Yes No

- a. If you responded "Yes" to the question above, are you listed because you defaulted or are delinquent on a student loan?* Yes No
- b. If you responded "Yes" to question 5.a., is the student loan default or delinquency the only reason you are listed on the LEIE?* Yes No

Applicants listed on the LEIE only due to this default will not automatically be prohibited from licensure.

## **Proposed Rule Text**

### **64B11-2.003 Fees; Application.**

Each applicant for licensure shall pay an application fee in the amount of \$100.00 in the form of a check or money order payable to the Department of Health. This application fee is nonrefundable and may not be used for more than one year from the original submission of the application. After one year from the date of the original submission of an application, a new application and new fee shall be required from any applicant who desires to be considered for licensure. The application shall be made on ~~the "State of Florida~~ "State of Florida Application for Licensure as an Occupational Therapist or Occupational Therapy Assistant," DH-MQA 1152 (revised 05/20 02/19), hereby adopted and incorporated by reference,

available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-10456>, or <http://www.floridasoccupationaltherapy.gov/applications/app-ot-ota.pdf>, or you may choose to apply through the on-line application located at <http://floridasoccupationaltherapy.gov/licensing/>.

*Rulemaking Authority 456.013, 468.221, 468.204 FS. Law Implemented 456.013, 456.0635, 468.209, 468.211, 468.221 FS. History—New 4-28-76, Amended 9-9-85, Formerly 21M-13.07, Amended 6-29-89, Formerly 21M-13.007, 61F6-13.007, 59R-61.007, Amended 1-12-09, 5-19-10, 12-19-12, 10-12-14, 2-1-16, 4-19-16, 7-27-16, 1-24-18, 5-30-19.*

**MOTION:** After discussion, Mr. Spafford made a motion to approve the new application as presented to include approval of the revised rule text incorporating the application. 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. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

**MOTION:** Mr. Spafford made a motion that the proposed amendments would not likely directly or indirectly increase regulatory to any entity including government costs in excess of \$200,000 in Florida within one year 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. 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 should not require a need to include a sunset revision. The motion was seconded by Ms. German and carried with a 4/0 vote.

***At this time Mr. Spafford returned to the regular agenda order.***

## **OLD BUSINESS**

### **Tab 14 February 24, 2020, General Business Meeting Minutes**

**MOTION:** Ms. Vizvary made a motion to approve the February 24, 2020 minutes as presented. The motion was seconded by Ms. German and carried with a 4/0 vote.

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

### **TAB 15 Staff Recognition**

Mr. Spafford commended staff and counsel for their continuance of outstanding work even under the difficult conditions regarding the COVID-19 pandemic and working at home protocols.

**ADJOURNMENT:** There being no further business the meeting adjourned the meeting at 10:24 a.m.