

The Florida Board of Occupational Therapy Practice

MINUTES GENERAL BUSINESS MEETING **AUGUST 10, 2020**

CONFERENCE CALL
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James Spafford, Board Chair

MINUTES
DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY PRACTICE
GENERAL BUSINESS MEETING
AUGUST 10, 2020

DIAL-IN NUMBER: 1-888-585-9008

When prompted, enter the following conference room number:

564-341-766, followed by the # sign.

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 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

Ryan Sandy, Prosecuting

COURT REPORTER

For the Record Court Reporting
Ron Convery
(850) 222-5491

OTHERS PRESENT

Kristen Neville, AOTA

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

HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

TAB 1 Luis Alonzo, OT, DOH Case# 2019-05622
OT 12543, File # 12028 (PCP Johnson & Spafford)

Mr. Alonzo's attorney, David Nunez, sent a written request for a continuance of this Hearing. Board Chair granted a continuance until the next meeting of the Board, scheduled for November 9, 2020.

SETTLEMENT AGREEMENT

TAB 2 Sandra Piper, OTA, DOH Case # 2017-02982 OTA 10327, File # 3162 (PCP Johnson & Banta)

Ms. Piper was present on the call and represented by legal counsel Jeffrey S. Howell, P.A. located at 2898-6 Mahan Drive, Tallahassee, FL 32308.

Mr. Ryan summarized the case for the Board. Respondent was charged with the following violation: Section 468.217(1)(l), Florida Statutes (2016), (l) Making deceptive, untrue, or fraudulent representations in the practice of occupational therapy or employing a trick or scheme in the practice of occupational therapy if such scheme or trick fails to conform to the generally prevailing standards of treatment in the occupational therapy community.

The case was presented as a Settlement Agreement that would impose the following penalties:

- Reprimand
- Fine of \$5,000 (five thousand dollars) to be paid within 2 (two) years of the filing date of the Final Order
- Reimbursement of Costs, totaling: \$2,115.91 to be paid within 2 (two) years of the filing of the Final Order
- 10 (ten) hours of Continuing Education in Ethics of Occupational Therapy Practice within 1 (one) year of the filing of the Final Order
- 1 (one) year of Probation, to include Indirect Supervision under a Board approved licensed Occupational Therapist as a Monitor, including submission of quarterly reports to the Board

MOTION: Following discussion, Mr. Spafford made a motion to accept the Settlement Agreement. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

PROSECUTOR'S REPORT

TAB 3 Ryan Sandy, Prosecuting Attorney

Mr. Sandy presented the Prosecutor's Report outlining the current status of 27 open/active disciplinary cases.

DOH/PROSECUTOR'S REPORT
BOARD OF OCCUPATIONAL THERAPY MEETING
Meeting Date August 10, 2020

TO: Allen Hall, Executive Director
FROM: Ryan Sandy, Assistant General Counsel
DATE: July 20, 2020
RE: Current Open / Pending Occupational Therapy Cases

Total Cases open/active in PSU:	27
Cases in EAU:	1
Cases under legal review:	16
Cases where PC Recom made:	1
Total Cases where PC has been found:	4
Cases in holding status:	0

Cases pending before DOAH:	0
Cases Agendaed for Board:	5
Cases on Appeal:	0
Year Old Cases:	10

MOTION: Mr. Spafford made a motion to allow Prosecution Services to continue prosecuting year-old cases. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

INDIVIDUAL CONSIDERATION

TAB 4. Michelle Marie Carroll, File # 21324, OT by Endorsement

Ms. Carroll was present on the call.

Ms. Carroll's application was presented to the Board regarding previous Criminal and Disciplinary History. Ms. Carroll has been disciplined by the Maine, New Hampshire, and Massachusetts Boards.

Ms. Carroll addressed the Board regarding her history and desire for licensure in Florida.

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

APPLICANT RATIFICATION LISTS

TAB 5 Licensed Occupational Therapists

MOTION: Mr. Spafford moved to approve the ratification list of 228 Occupational Therapists. The motion was seconded by Ms. German and carried with a 4/0 vote.

ACTION TAKEN: 228 Occupational Therapists ratified for licensure.

TAB 6 Licensed Occupational Therapy Assistants

MOTION: Mr. Spafford. moved to approve the ratification list of 84 Occupational Therapy Assistants applicants for licensure. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

ACTION TAKEN: 84 Occupational Therapy Assistants ratified for licensure.

TAB 7 Continuing Education Provider Applications

MOTION: Mr. Spafford moved to approve the list of 11 continuing education providers including an ADDENDUM list of 9 providers, Prevention of Medical Errors, Florida Laws and

Rules and Human Trafficking courses, completing a total list of **20**. The motion was seconded by Ms. German and carried with a 4/0 vote.

ACTION TAKEN: 20 continuing education providers ratified for licensure.

ADMINISTRATIVE PROCEEDINGS

RULES REVIEW AND DEVELOPMENT

Tab 8 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). This bill removed licensure and disciplinary penalties resulting from defaulting on a Federal student loan. Specifically, the 456.0635 History Section of the application has been updated to ask questions to distinguish applicants who are listed on the U.S. Department of Health & Human Services' Office of the Inspector General's List of Excluded Individual Entities (LEIE) *only* due to a Federal student loan default. Applicants listed on the LEIE only due to this default, will not automatically be "prohibited" from licensure.

Health History Questions

In 2010, the original standardized health history questions were approved as part of ADA settlement with US Department of Health and Human Services for use in licensure application process by all 22 regulatory boards/councils within the Bureau of MQA.

In 2018, the Council of Florida Medical School Deans expressed concerns about health history questions impacting medical students' ability to become licensed and requested revisions. The Boards of Medicine and Osteopathic Medicine developed a joint workgroup in conjunction with the other 20 regulatory boards/councils to revise questions. Revised health history questions were presented to all 22 regulatory boards/councils. Some boards/councils never adopted the questions with a common concern being the revised questions were too subjective. Because of this divide, a project was undertaken to develop questions to ensure every profession is utilizing standardized questions. The outcome of an affirmative answer to the health history questions is typically not denial of licensure but rather referral to the Department's Impaired Practitioner Program.

In 2020, the Bureau Chief for Health Care Practitioner Regulation, in conjunction with the Chief Assistant Attorney General, have analyzed state and federal law, reviewed case law and developed new health history questions to propose to all 22 regulatory boards/councils as it is critical for each profession to utilize uniform questions during the licensure process. Each board/council is asked to review the newly developed questions and adopt them.

- Purpose of the newly revised health history questions is to objectively focus on current impairment as well as modified look-back periods.
- Allow individuals to seek treatment for conditions without fear that past treatment will be a barrier to licensure.
- Focus on the ability of the practitioner to practice their profession with reasonable skill and safety and not require practitioners to provide extensive records regarding diagnosis or past treatment.

This Tab provided a chart of the original questions and each workgroups production as developed.

The Board was requested to review and consider approval of the revised application and the application rule.

The revised 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 “State of Florida Application for Licensure as an Occupational Therapist or Occupational Therapy Assistant,” DH-MQA 1152 (revised **08/20 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 application and rule language presented and directed counsel to proceed with rule making procedures. The motion was seconded by Ms. German and carried with a 4/0 vote.

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

MOTION: Mr. Spafford made a motion to find the proposed revisions do not have an adverse impact on small businesses and will not be likely to directly or indirectly increase regulatory costs to any entity (including government) in excess of \$200,000 in the aggregate in Florida within 1 year after the implementation of the rule. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

MOTION: Mr. Spafford made a motion to find that a violation of this rule or any part of this rule will not designate as a minor violation. The motion was seconded by Ms. German and carried with a 4/0 vote.

REPORT OF ASSISTANT ATTORNEY GENERAL – Ronald “Tom” Jones

TAB 9 Rule Status Report:

- Rule 64B11-4.001, F.A.C., Neurofeedback Device
- Rule 64B11-4.003, F.A.C., Standards of Practice; Discipline
- Rule 64B11-5.001, F.A.C., Requirements for License Renewal of an Active License; Continuing Education

Mr. Jones provided the Board with the latest Rules activity report per August 2020. Presented as informational only.

TAB 10 Discussion of the 2020-21 Annual Regulatory Plan and Comprehensive Rules Review

Mr. Jones Presented the Annual Regulatory Plan to the Board covering the dates of October 1, 2020, to September 30, 2021.

MOTION: Mr. Spafford made motion for Board Counsel to ratify the finalization of the 2020-2021 Annual Regulatory Plan. The motion was seconded by Ms. German and carried with a 4/0 vote.

COMPREHENSIVE RULES REVIEW

Mr. Jones has reviewed all OT Board Rules. The Governor's Office is requiring completion of a questionnaire regarding each rule.

MOTION: Ms. Vizvary made a motion to delegate to Board Chair. The motion was seconded by Dr. Banta and carried with a 4/0 vote. Mr. Jones will follow-up with Mr. Spafford to provide questionnaires.

REPORTS, IF ANY

TAB 11 Board Chair, Jim Spafford

None to report

Other Board Members

None to report

TAB 12 Executive Director

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

The above reports were presented as informational only.

NEW BUSINESS

TAB 13 AOTA - NBCOT OT Licensure Compact Update

Mr. Hall stated the information presented regarding AOTA's review of a possible licensure Compact is for information only at this time, and that there is a Compact link with information on AOTA's website, and AOTA is encouraging public questions and input. Mr. Hall continued that he is not aware whether legislation will or will not be initiated, however, if a legislative bill is filed, he would inform the Board accordingly.

Ms. Vizvary encouraged the Board members to carefully review the information and expressed the importance to be educated as this would surely affect the practice and them as a Board, should this move forward and Florida choose to join the Compact.

Ms. German inquired if there was a deadline or timeline for the proposed compact actions. Mr. Spafford agreed with Ms. Vizvary encouraging the members to research and ask questions and responded to Ms. German stating there is an effort to prepare and present a legislative proposal by the

2021 legislative session. Mr. Hall reiterated to the members to review Compact link for information on the AOTA's website.

Tab 14 AOTA Correspondence re: Proposed Amendment to Rule 64B11-4.001, F.A.C., Use of Prescription Devices - Neurofeedback

Ms. Kristen Neville (AOTA) was present and addressed the Board.

Ms. Neville spoke regarding AOTA's comments to the Board's proposed rules on neurofeedback, specifically regarding the required training and evidence-based practice to support the use of neurofeedback in an occupational therapy context.

Ms. German stated the training protocols in the new rule were consistent with the training required for the Board's other Prescription Devices, Electric Stimulation and Ultrasound, and is more extensive requiring more adaptive training, that has been in place for many years without complications.

Mr. Hall and Ms. German responded to Mr. Spafford's inquiry indicating that the Neurofeedback training is general training and would apply the same to any other profession's practitioners being trained. The training is not specific to any discipline and would not cause a negative impact for other practitioners or Boards.

Ms. Vizvary reflected for the discussion, that the Board had a licensure practitioner address them regarding this issue, and the Board, took many meetings and lots of time, to complete extensive research and verification before beginning rule development. The research included widespread study and much communication with the practitioner and an expert in the neuro feedback practice during the rule development and felt everything was well examined before finalizing the Rule.

Ms. Vizvary also addressed the concern from Ms. Neville regarding evidence-based practice, and Ms. German stated there is considerable evidence-based information in the field as studied by herself, and others, and was well established to the Board by communication and data with the specific practitioner and the expert consulted.

Board Counsel explained if the Board made no changes in response to AOTA's letter, the Rule as scheduled would soon be effective, however, if the Board decided further discussion and review was necessary, the Board would need to withdraw the Rule, and begin rule development again.

Dr. Banta commented she agreed with the new Rule's compatible training requirements with the existing modalities and was comfortable with moving forward with the Rule.

Discussion ensued, and Board members confirmed they believed the training and evidence-based information was researched and reviewed intently, including contribution from experts in neurofeedback practice prior to the finalization of the Rule, and elected to make no changes, allowing the rule to move forward.

Upon Mr. Spafford's inquiry for final thoughts, Ms. Neville commended the Board on their substantial work and due diligence and for addressing and answering AOTA's expressed concerns and thanked them for allowing her the opportunity to attend and respond in the meeting. She stated the discussion was very helpful and she would relay the Board's positive feedback to others at AOTA. The Board commended Ms. Neville and AOTA for their attention to the Board's actions and their continual earnest endeavors in practice.

OLD BUSINESS

Tab 15 May 18, 2020, General Business Meeting Minutes

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

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

TAB 16 Staff Recognition

Provided for information purposes only.

Mr. Spafford commended staff for their continual outstanding work performance.

ADJOURNMENT

MOTION: There being no further business the meeting adjourned at 10:18 a.m.