

**The Florida  
Board of Occupational Therapy Practice**

**MINUTES  
GENERAL BUSINESS MEETING  
NOVEMBER 09, 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  
NOVEMBER 9, 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 9:00 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

**ASSISTANT GENERAL COUNSEL**

Chase Dan Beste  
Christina Shideler

**COURT REPORTER**

Ray Convery  
For the Record Court Reporting  
(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 PROCEEDINGS**

**DETERMINATION OF WAIVER**

**TAB 1 Gabriela Garavito, DOH Case# 2019-05622, OT 7750, File # 6573,**  
(PCP Johnson & Banta)

Ms. Garavito was not present on the call and not represented by legal counsel.

Prosecuting Attorney Mr. Den Beste summarized the case for the Board presented as a Determination of Waiver. Respondent was charged with the following violation: Section 468.072(1)(kk), Florida Statutes. Being terminated from the state Medicaid program pursuant to s. 409.913, 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.

An administrative complaint was filed by the Department in May 20, 2020, due to her termination from the Florida Medicaid program in May 20, 2020. Respondent was terminated from the program September 19, 2020 for failure to comply to an agreed upon payment schedule, and her eligibility has not been restored.

**MOTION:** Mr. Spafford made a motion that the elections of rights nor any other responses have been received from the Respondent, therefore, the Respondent has waived her rights to elect an avenue of resolution, by failure to timely respond to a noticed Administrative Complaint. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

**MOTION:** Mr. Spafford made a motion to adopt the allegations of facts as set forth in the Administrative Complaint as findings of facts of the Board. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

**MOTION:** Mr. Spafford made a motion that the findings of facts support a violation of the Florida Statutes as charged in the Administrative Complaint. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

**MOTION:** Mr. Spafford made a motion to find the subject in violation of Florida Statutes as charged in the Administrative Complaint. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

At this point in the procedures, Mr. Den Beste, questioned and it was confirmed that Dr. Banta was on the PCP for this case, and decision was made for Dr. Banta to be recused from the voting on this case. The previous motions were repeated with Dr. Banta abstaining from the voting.

**MOTION:** Mr. Spafford made a motion that the elections of rights nor any other responses have been received from the Respondent, therefore, the Respondent has waived her rights to elect an avenue of resolution, by failure to timely respond to a noticed Administrative Complaint. The motion was seconded by Ms. German and carried with a 3/0 vote. Dr. Banta abstained from vote.

**MOTION:** Mr. Spafford made a motion to adopt the allegations of facts as set forth in the Administrative Complaint as findings of facts of the Board. The motion was seconded by Ms. German and carried with a 4/0 vote. Dr. Banta abstained from vote.

**MOTION:** Mr. Spafford made a motion that the findings of facts support a violation of the Florida Statutes as charged in the Administrative Complaint. The motion was seconded by Ms. German and carried with a 4/0 vote. Dr. Banta abstained from vote.

**MOTION:** Mr. Spafford made a motion to agreeing with the Department's penalty recommendation of **Revocation**, which falls outside of the disciplinary guidelines as subscribed by Rule 64B114.003(4)(II), Florida Statutes. However, the Board may deviate from recommended penalties when considering mitigating or more aggravating factors. In this case, the Respondent's license is currently delinquent and pursuant to Section 456.0635 cannot be renewed. A suspension would give the false impression that the Respondent would be eligible for renewal. The motion was seconded by Ms. German and carried with a 3/0 vote. Dr. Banta abstained from vote.

**MOTION:** Following discussion, Mr. Spafford made a motion to impose costs of \$305.15. Ms. German seconded the motion and carried with a 3/0 vote. Dr. Banta abstained from vote.

Mr. Hall suggested a time frame for the costs to be paid. Mr. Den Beste recommended 90 days.

**MOTION:** Mr. Spafford moved costs to be paid within 90 days of the filing date of the Final Order. Mrs. Vizvary seconded the motion which carried with a 3/0 vote. Dr. Banta abstains from vote.

Ms. Schiedler officially introduced Mr. Chase Den Beste as the new Prosecuting Attorney for the Board of Occupational Therapy Practice. The Board welcomed Mr. Den Beste.

## **PROSECUTOR'S REPORT**

**TAB 3            Den Beste, Assistant General Counsel**

Mr. Den Beste 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 November 9, 2020

TO: Allen Hall, Executive Director  
FROM: Chase E. Den Beste, Assistant General Counsel  
DATE: October 6, 2020  
RE: Current Open / Pending Occupational Therapy Cases

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<b>Total Cases open/active in PSU:</b>	<b>27</b>
Cases in EAU:	0
Cases under legal review:	18
Cases where PC Recom. made:	2
Total Cases where PC has been found:	4
Cases in holding status*:	1
Cases pending before DOAH:	0
Cases Agendaed for Board:	2
Cases on Appeal:	0
Year Old Cases:	17

\*Waiting on Final Order to be issued.

**MOTION:** Mr. Spafford made a motion for Prosecution Services to continue prosecuting cases older than 1 year. The motion was seconded by Ms. Vizvary 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 **186** Occupational Therapists. The motion was seconded by Ms. German and carried with a 4/0 vote.

**ACTION TAKEN:** **186** Occupational Therapists ratified for licensure.

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

**MOTION:** Mr. Spafford moved to approve the ratification list of **109** Occupational Therapy Assistants applicants for licensure. The motion was seconded by Ms. German. and carried with a 4/0 vote.

**ACTION TAKEN:** **109** Occupational Therapy Assistants ratified for licensure.

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

**MOTION:** Mr. Spafford moved to approve the ratification list of **26** continuing education providers including. The motion was seconded by Ms. Vizvary and carried with a 4/0 vote.

**ACTION TAKEN:** **26** continuing education providers ratified for licensure.

### **ADMINISTRATIVE PROCEEDINGS**

### **RULES REVIEW AND DEVELOPMENT**

**TAB 6            Rule 64B11-4.003, F.A.C., Standards of Practice; Discipline**

Mr. Jones reported to the Board new disciplinary guidelines added to Section 456.072, Florida Statutes, regarding emotional support animals, and requested the Board's vote to approve.

**Laws of Florida 2020-76**

Section 4. Paragraph (pp) is added to subsection (1) of section 456.072, Florida Statutes, to read:

**456.072 Grounds for discipline; penalties; enforcement. —**

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

(pp) Providing information, including written documentation, indicating that a person has a disability or supporting a person's need for an emotional support animal under s. 760.27 without personal knowledge of the person's disability or disability-related need for the specific emotional support animal.

Ms. Vizvary requested were the new guidelines compatible to other professions guidelines. Mr. Jones confirmed such and added he had requested the Prosecutor's office for assistance in developing the new penalty ranges, based on their expertise and experience within the many Boards in the Bureau. Mr. Dan Beste commented his confidence in the final draft, with the converging of himself, Mr. Jones and Ms. Schielder, in review of the range of penalties for several other professions to develop the presented guidelines.

**MOTION:** Mr. Spafford moved to approve and authorize Mr. Jones to continue with rule making procedures for Rule 64B11-4.003, F.A.C. 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 in excess of \$200,000 within one year after the implementation of the Rule. The motion was seconded by Dr. Banta and carried with 4/0 vote.

**MOTION:** Mr. Spafford made a motion that the proposed rule language would not have an adverse impact nor increase regulatory costs in the aggregate in excess of \$1,000,000 dollars within 5 years after the implementation of the Rule. The motion was seconded by Ms. Vizvary and carried with 4/0 vote.

**MOTION:** Mr. Spafford made a motion that the proposed rule nor a part of the rule should not be designated as a minor violation. The motion was seconded by Ms. German and carried with 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.

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

**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

Letter of concern and ~~\$100~~ \$500 fine.

~~Permanent Revocation.~~  
Imposition of discipline which would have been if the substantive violation occurred in Florida

Second and Subsequent Offenses

~~1-year suspension~~ Imposition of discipline which would have been if the substantive violation occurred in Florida and ~~\$1,000~~ \$2,500 fine.

~~Permanent revocation~~ and \$10,000 fine.

Third Offense

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

**(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.~~

~~Permanent revocation and \$5,000 fine.~~

Misdemeanor

Reprimand and \$250 fine.

1-year probation with conditions and \$500 fine.

Felony

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

1-year suspension and \$2,500 fine.

Felony crimes having a factual basis related to assault, battery, abuse, or which otherwise caused bodily harm.

1-year suspension and \$5,000 fine.

Permanent revocation and \$10,000 fine.

Crimes involving fraudulent misrepresentation.

1-year suspension and \$5,000 fine.

Permanent revocation and \$10,000 fine.

Second and Subsequent Offenses

~~1-year suspension and \$5,000 fine.~~

~~Permanent revocation and \$10,000 fine.~~

Misdemeanor

1-year probation with conditions and \$500 fine.

1-year suspension and \$1,000 fine.

Felony

1-year suspension and 2,500 fine.

Permanent revocation and \$5,000 fine.

Felony crimes having a factual basis related to assault, battery, abuse, or which otherwise caused bodily harm.

2-year suspension and \$10,000 fine.

Permanent revocation and \$10,000 fine.

Crimes involving fraudulent misrepresentation.

2-year suspension and \$10,000 fine.

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

**(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 <u>and Subsequent</u> Offenses	<del>6 months</del> <u>1 year</u> suspension, <del>1 year</del> <u>probation with conditions</u> and \$6,000 fine.	<del>1 year suspension, 2 years probation with conditions</del> <u>Permanent revocation</u> and <del>\$6,000</del> <u>\$10,000</u> fine.
<del>Third Offense</del>	<del>1 year suspension, 2 years probation with conditions and \$6,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>

**(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 <del>\$100</del> <u>\$500</u> fine, unless otherwise provided by the law.
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Second <u>and Subsequent</u> Offenses	<del>6 months probation with conditions suspension and \$100</del> <u>\$1,000</u> fine.	<del>6 months suspension, 1 year probation with conditions</del> <u>Restriction of practice or license and \$1,000</u> <u>\$5,000</u> fine, <del>unless otherwise provided by the law.</del>
Third Offense	<del>6 months suspension, 1 year probation with conditions and \$500 fine.</del>	Revocation and \$5,000 fine.
<b>(i) Failing to file a report as required.</b> <b>(Sections 468.217(1)(i), and 456.072(1)(l), F.S.)</b>		
First Offense	1 year probation with conditions and \$100 fine.	6 months suspension, 1 year probation with conditions and \$250 fine.
Second <u>and Subsequent</u> Offenses	6 months suspension, 1 year probation with conditions and <del>\$250</del> <u>\$500</u> fine.	<del>Revocation</del> <u>1 year suspension, 2 years probation with conditions</u> and \$1,000 fine.
Third Offense	<del>1 year suspension, 2 years probation with conditions and \$1,000 fine.</del>	Revocation and \$10,000 fine.
<b>However, if the violation is for making a false or fraudulent representation, a fine of \$10,000 per count or offense.</b>		
<b>(j) Kickbacks or split fee arrangements.</b> <b>(Section 468.217(1)(j), F.S.)</b>		
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</u> and \$5,000 fine.
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> <u>\$2,500</u> fine.	<del>Permanent</del> <u>Revocation</u> and \$8,000 <u>\$10,000</u> fine.
Third Offense	<del>2 years suspension, 3 years probation with conditions and \$2,500 fine.</del>	Revocation and \$10,000 fine.
<b>(k) Exercising influence to engage patient in sex.</b> <b>(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.	<del>Permanent</del> <u>Revocation</u> and \$7,500 fine.
Second <u>and Subsequent</u> Offenses	<del>Revocation</del> <u>Restriction of practice or license</u> and \$7,500 fine.	<del>Permanent</del> <u>Revocation</u> and \$10,000 fine.
<b>(l) Deceptive, untrue, or fraudulent representations in the practice.</b> <b>(Sections 468.217(1)(l), and 456.072(1)(a), F.S.)</b>		
First Offense	1 year probation with conditions and \$10,000 fine. 5K	1 year suspension, 1 year probation with conditions and \$10,000 fine. 5K
Second <u>and Subsequent</u> Offenses	<del>1</del> <u>2</u> years suspension, 1 year probation with conditions and \$10,000 fine.	Revocation and \$10,000 fine.
Third Offense	<del>2 years suspension, 2 years probation with conditions and \$10,000 fine.</del>	Revocation and \$10,000 fine.
<b>(m) Improper solicitation of patients.</b> <b>(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</u> and \$1,500 <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>

**(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.)**

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> <u>1 year probation and \$1,000 fine.</u>	

**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. (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 <del>0</del> fine.
Second <u>and Subsequent</u> Offenses	<del>Revocation</del> <u>Restriction of practice or license</u> and \$5,000 fine.	<u>Permanent</u> <del>Revocation</del> and \$10,000 fine.

**(p) Performing professional services not authorized by patient.  
(Section 468.217(1)(p), F.S.)**

First Offense	<del>Reprimand</del> <u>Letter of concern</u> and \$500 fine.	<del>Reprimand</del> <u>6 months probation with conditions</u> and <del>\$1,000</del> <u>\$2,500</u> fine.
Second <u>and Subsequent</u> Offenses	<del>1 year probation with conditions</del> <u>3 months suspension</u> and <del>\$4,000</del> <u>\$2,500</u> fine.	<del>Restriction of practice or license</del> <u>Permanent revocation</u> and <del>\$5,000</del> <u>\$10,000</u> fine.

Third Offense	<del>6 months probation with conditions and \$3,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
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**(q) Malpractice.  
(Section 468.217(1)(q), F.S.)**

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.
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Second <u>and Subsequent</u> Offenses	1 year suspension, 2 years probation with conditions and \$5,000 fine.	<u>Permanent</u> <del>Revocation</del> 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.	<u>Permanent</u> <del>Revocation</del> 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 with conditions and \$3,000 fine.</del>	<del>Revocation and \$10,000 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	<del>1 year suspension and then s</del> <u>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>	<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>
<del>Third</del> 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. (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. (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</u> and \$100 fine.
Second <u>and Subsequent</u> Offenses	<del>Reprimand</del> <u>Letter of concern</u> and \$100 <u>\$500</u> fine.	<del>Reprimand</del> <u>Letter of concern</u> and \$500 <u>\$1,000</u> fine.
<del>Third</del> 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), <u>Part III</u>, 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 and \$1,500 fine.</u>
Second <u>and Subsequent</u> Offenses	<del>6 months suspension, 1 year probation with conditions and \$1,500 fine</del> <u>Restriction of practice or license and \$1,500 \$2,500 fine.</u>	<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 <u>and Subsequent</u> Offenses	<del>1 year suspension, 2 years probation with conditions</del> <u>Restriction of practice or license and \$5,000 fine.</u>	<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.

<u>Second and Subsequent Offenses</u>	<u>Restriction of practice or license and \$5,000 fine.</u>	<u>Permanent revocation and \$10,000 fine</u>
<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	<del>6 months probation with conditions and \$1,000 fine.</del>	<del>Permanent revocation and \$5,000 fine.</del>
<u>Misdemeanor</u>	<u>Reprimand and \$250 fine.</u>	<u>1 year probation with conditions and \$500 fine.</u>
<u>Felony</u>	<u>1 year probation with conditions and \$1,000 fine.</u>	<u>1 year suspension and \$2,500 fine.</u>
<u>Felony crimes having a factual basis related to assault, battery, abuse, or which otherwise caused bodily harm.</u>	<u>1 year suspension and \$5,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>Crimes involving fraudulent misrepresentation.</u>	<u>1 year suspension and \$5,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>Second and Subsequent Offenses</u>	<del>1 year suspension and \$5,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<u>Misdemeanor</u>	<u>1 year probation with conditions and \$500 fine.</u>	<u>1 year suspension and \$1,000 fine.</u>
<u>Felony</u>	<u>1 year suspension and 2,500 fine.</u>	<u>Permanent revocation and \$5,000 fine.</u>
<u>Felony crimes having a factual basis related to assault, battery, abuse, or which otherwise caused bodily harm.</u>	<u>2-years suspension and \$10,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>Crimes involving fraudulent misrepresentation.</u>	<u>2-years suspension and \$10,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<b>(bb) Failing to comply with the educational course requirements for human immunodeficiency virus and acquired immune deficiency syndrome. (Section 456.072(1)(e), F.S.)</b>		
First <u>and Subsequent Offenses</u>	Letter of Concern.	6 months probation with conditions and \$500 fine.
<b>(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.)</b>		

First Offense	1 year probation with conditions and \$1,000 fine.	<del>6 months suspension, 1 year probation with conditions</del> <u>1 year suspension</u> and \$5,000 fine.
Second <u>and Subsequent</u> Offenses	<del>6 months suspension, 1 year probation with conditions</del> <u>Restriction of practice or license</u> and \$2,000 fine.	<del>1 year suspension, 2 years probation with Conditions</del> <u>Permanent revocation</u> and <b>\$10,000 fine.</b>
<del>Third Offense</del> <b>(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.)</b>	<del>1 year suspension, 2 years probation with conditions and \$4,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
First Offense	1 year probation with conditions and \$10,000 fine.	1 year suspension, <del>1 year probation with conditions</del> and \$10,000 fine.
Second <u>and Subsequent</u> Offenses	<del>1 year suspension, 1 year probation with conditions</del> <u>Restriction of practice or license</u> and \$10,000 fine.	<u>Permanent revocation</u> and \$10,000 fine.
<del>Third Offense</del> <b>(ee) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding. (Section 456.072(1)(r), F.S.)</b>	<del>2 years suspension, 2 years probation with conditions and \$10,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
First Offense	6 months probation with conditions and \$1,000 fine.	<del>6 months suspension, 1 year probation with conditions</del> <u>1 year suspension</u> 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</u> and \$2,000 <u>\$4,000</u> fine.	<del>1 year suspension, 1 years probation with conditions</del> <u>Permanent revocation</u> and <del>\$5,000</del> <u>\$10,000</u> fine.
<del>Third Offense</del> <b>(ff) Engaging or attempting to engage a patient in verbal or physical sexual activity. (Section 456.072(1)(v), F.S.)</b>	<del>1 year suspension, 2 years probation with conditions and \$4,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
First Offense	1-year suspension, 4 years probation with conditions referral to PRN and \$5,000 fine.	<u>Permanent revocation</u> and \$7,500 fine.
Second <u>and Subsequent</u> Offenses	<u>Permanent Revocation</u> and \$7,500 fine.	<u>Permanent Revocation</u> and \$10,000 fine.
<b>(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.)</b>		

First Offense

~~Reprimand~~ Letter of concern and  
\$500 fine.

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

Second and Subsequent Offenses

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

~~1-year suspension, 2 years~~  
~~probation with Conditions~~

	<u>\$1,000 fine. Permanent revocation and</u>	<u>\$1,000 \$5,000</u> fine.
<del>Third Offense</del>	<del>1-year suspension, 2 years probation with conditions and \$1,000 fine.</del>	<del>Revocation and \$5,000 fine.</del>
<b>(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.)</b>		
First Offense	1-year probation with conditions and \$1,000 fine.	<del>6 months suspension, 1 year probation with conditions 1-year suspension and \$4,000 fine.</del>
Second <u>and Subsequent</u> Offenses	<del>6 months suspension, 2 years probation with conditions</del> <u>Restriction of practice or license and \$2,000 \$4,000 fine.</u>	<del>1 year suspension, 2 year probation with condition</del> <u>Permanent revocation and \$7,5000 \$10,000 fine.</u>
<del>Third Offense</del>	<del>1-year suspension, 2 years probation with conditions and \$4,000 fine.</del>	<del>Revocation and \$10,000 fine.</del>
<b>(ii) Failing to finish PRN treatment program or failing without just cause to comply with PRN contract. (Section 456.072(1)(hh), F.S.)</b>		
First Offense	Suspension until compliant with program; up to suspension until compliant with program, followed by up to 5 years probation with conditions.	
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.	
<b>(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.)</b>		
First <u>and Subsequent</u> Offenses	<u>Permanent</u> <del>revocation</del> 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	<del>Letter of concern, 6 months probation with conditions and a fine of \$500 fine.</del>	<del>Probation and a fine of 1-year suspension and \$2,500 fine.</del>
Second <u>and Subsequent</u> Offenses	<del>Reprimand and a fine of \$2,500 1-year suspension and \$3,000 fine.</del>	<del>Reprimand, probation and a fine of Permanent revocation and \$5,000 fine.</del>
Third Offense	<del>Suspension and a fine of \$5,000.</del>	<del>Revocation and a fine of \$5,000.</del>

**(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	<del>Letter of concern and a fine of \$1,000 fine.</del>	<del>Probation and a fine of 1-year suspension and \$1,000 \$2,500 fine.</del>
Second <u>and Subsequent</u> Offenses	<del>Probation and a fine of \$1,000 1-year suspension and \$5,000 fine.</del>	<del>Suspension and a fine of Permanent revocation and \$5,000 10,000 fine.</del>
Third Offense	<del>Suspension and a fine of \$5,000.</del>	<del>Revocation and a fine of \$10,000.</del>

**(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 <u>and Subsequent</u> Offenses	<del>Permanent revocation and a fine of \$10,000, or in the case of application for licensure, denial of license.</del>
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**(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	<del>Letter of Concern and \$500 fine.</del>	<del>6 months probation with conditions 1-year suspension and \$1,000 fine.</del>
Second <u>and Subsequent</u> Offenses	<del>Reprimand 1-year suspension and \$3,000 fine.</del>	<del>Permanent revocation and \$5,000 fine.</del>
Third Offense	<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.)**

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

**(pp) Providing information, including written documentation, indicating that a person’s need for an emotional support animal under s. 760.27 without personal knowledge of the person’s disability or disability-related need for the specific emotional support animal. (Section 456.072(1)(pp), F.S.)**

<p><u>First Offense</u></p>	<p><u>1-year probation with conditions and a \$5,000 fine.</u></p>	<p><u>6 months suspension, 6 months probation with conditions, and a \$10,000 fine.</u></p>
<p><u>Second and Subsequent Offenses</u></p>	<p><u>1-year suspension, 1-year probation with conditions, and a \$5,000 fine.</u></p>	<p><u>Permanent revocation and a \$10,000 fine.</u></p>

**(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 5.002, 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.*

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

### **TAB 7 Rule Status Report:**

- Rule 64B11-4.001, F.A.C., Neurofeedback Device
- Rule 64B11-4.003, F.A.C., Standards of Practice; Discipline
- Rule 64B11-2.003, F.A.C., Fees; Application

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

## **REPORTS, IF ANY**

### **TAB 8 Board Chair, Jim Spafford**

None to report

#### **Other Board Members**

None to report

### **TAB 9 Executive Director**

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

The above reports were presented as informational only.

Mr. Hall instructed the Board that the 2021 meetings are scheduled to resume as face to face meetings. However, to ensure rooms large enough to safeguard for social distancing precautions, the meetings will be held at the Hotel where members will be staying. Further plans and changes will be directed to everyone.

## **NEW BUSINESS**

### **TAB 10 Reminder, Human Trafficking CE Requirement**

Mr. Spafford reviewed for the Board the reminder for the new legislative Human Trafficking, 1-hour course requirement by January 1, 2020. Mrs. Vizvary questioned, and it was confirmed that CE Broker is monitoring the fulfillment of this requirement.

### **TAB 11 Discussion: 2021 Renewal**

Mrs. Vizvary requested a discussion by the Board regarding and extension of the renewal deadline due to two significant issues that have severely impacted many licenses financial situations. First being the impact of PDM professions have been impacted by the PDM & CDPM and then significant decrease in income and hours... due to the COVID impact.

Mr. Hall added there are other professions the Department has extended deadlines, not specific profession by profession, but by certain renewal cycles that have fallen within the times of this pandemic.

**MOTION:** After Discussion, Ms. German moved to recommend to the Department extend the license renewal deadline for Occupational Therapy licensees to June 30, 2021. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

#### **TAB 12          Financial Reports**

The above reports were presented as informational only.

#### **TAB 13          Doe v. Kentucky Bar Association**

Mr. Jones reviewed for the Board relevancy regarding this case for informational purposes only.

#### **OLD BUSINESS**

#### **TAB 14          August 10, 2020, General Business Meeting Minutes**

**MOTION:** Mr. Spafford made a motion to approve the August 10, 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 15          Antitrust Case**

Mr. Jones informed the Board regarding an Antitrust Case and the current Antitrust laws.

#### **TAB 16          Licensure Compact**

Information was presented regarding AOTA's review of the possible licensure Compact for information 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. Spafford expressed he felt it important for Florida to choose to join the Compact should it move forward. Ms. Vizvary also encouraged Florida's participation.

Mr. Hall stated he is not aware whether legislation has been initiated, however, if a legislative bill is filed, he would inform the Board accordingly.

#### **TAB 17          Staff Recognition**

Provided for information purposes only.

Mr. Spafford commended all of Board staff for their continual outstanding work performance. Remarkable in these very difficult times, how much work can be completed remotely, by the dedicated staff for the professions and the Board.

#### **ADJOURNMENT**

There being no further business the meeting adjourned at 10:08 a.m.