

The Florida Board of Occupational Therapy Practice

MINUTES

GENERAL BUSINESS MEETING

FEBRUARY 22, 2021

CONFERENCE CALL

1-888-585-9008

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



James Spafford, Board Chair

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MINUTES
DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY PRACTICE
GENERAL BUSINESS MEETING
FEBRUARY 22, 2021

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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

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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.

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Call to Order

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

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15

Mr. Spafford, Board Chair, called the meeting to order at 9:02 a.m. Those present for all or part of the meeting, included the following:

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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 Administrator
Deborah Boutwell, Regulatory Specialist
Giselle Horton, Regulatory Specialist

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ASSISTANT ATTORNEY GENERAL

Ronald "Tom" Jones, Board Counsel

ASSISTANT GENERAL COUNSELS

Chase Dan Beste, Prosecuting Attorney
Andrew Pietrylo, Allied Health Manager

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COURT REPORTER

For the Record Reporting, Inc.
1500 Mahan Drive, Suite 140
Tallahassee, FL 32317
850-222-5491
fortherecord@tallahasseecourtreporting.com

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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.

32

GENERAL BUSINESS

33

DISCIPLINARY PROCEEDINGS

34

HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

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

37

The Board Chair granted a continuance of this case prior to the meeting.

1 **PROSECUTOR'S REPORT**

2 **TAB 2** Chase Den Beste, Assistant General Counsel

3 Mr. Den Beste introduced Mr. Andrew Pietrylo, Esq., the new Allied Health Section Manager.
4 Mr. Pietrylo addressed the Board.

5 Mr. Den Beste presented the Prosecutor's Report outlining the current status of 26
6 open/active disciplinary cases.

7 **DOH/PROSECUTOR'S REPORT**
8 **BOARD OF OCCUPATIONAL THERAPY MEETING**
9 **Meeting Date February 22, 2021**

10 TO: Allen Hall, Executive Director
11 FROM: Chase E. Den Beste, Assistant General Counsel
12 DATE: December 28, 2020
13 RE: Current Open / Pending Occupational Therapy Cases

14	Total cases open/active in PSU:	26
15	Cases in EAU:	0
16	Cases under legal review:	17
17	Cases where PC Recom. made:	3
18	Total Cases where PC has been found:	4
19	Cases in holding status:	0
20	Cases pending before DOAH:	0
21	Cases Agendaed for Board:	2
22	Cases on Appeal:	0
23	Year Old Cases:	16

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

27 **ADMINISTRATIVE PROCEEDINGS**

28 **INDIVIDUAL CONSIDERATIONS**

29 **TAB 3** Joshua E. Osorio, File # 11538, OTA by Endorsement

30 Mr. Osorio was present on the call and not represented by legal counsel.

31 Mr. Osorio's application was before the Board due to an affirmative response to a question on
32 the application.

33 Dr. Banta, Ms. German and Mr. Spafford commended Mr. Osorio for making positive
34 accomplishments.

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

1 **TAB 4 Dovison Kereri, File # 21805, OT by Endorsement**

2 Dr. Kereri was present on the call and not represented by legal counsel.

3 Dr. Kereri's application was presented to the Board due to an affirmative response to a question
4 on the application.

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

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8 **TAB 5 Shanna Marie Larocque, File # 19710, OT by Endorsement**

9

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

11 Ms. Larocque's application was before the Board due to affirmative responses on the application.

12 Dr. Alexis Polles, Medical Director of the Professionals Resource Network (PRN), was in
13 attendance on the call and advised Ms. Larocque regarding PRN's process and number to
14 contact.

15 **MOTION:** After discussion, Mr. Spafford made a motion to **approve** Ms. Larocque's application
16 for licensure contingent upon successful completion of a PRN evaluation, giving the applicant a
17 30-day deadline to contact PRN, 60-day deadline to complete an evaluation and 90-day
18 deadline to comply with PRN recommendations. The motion was seconded by Ms. German and
19 carried with a 4/0 vote.

20 **APPLICANT RATIFICATION LISTS**

21 **TAB 6 Licensed Occupational Therapists**

22 **MOTION:** Mr. Spafford moved to approve the ratification list of **273** Occupational Therapists.
23 The motion was seconded by Ms. German and carried with a 4/0 vote.

24 **ACTION TAKEN:** **273** Occupational Therapists ratified for licensure.

25 **TAB 7 Licensed Occupational Therapy Assistants**

26 **MOTION:** Mr. Spafford moved to approve the ratification list of **151** Occupational Therapy
27 Assistants applicants for licensure. The motion was seconded by Dr. Banta and carried with a
28 4/0 vote.

29 **ACTION TAKEN:** **151** Occupational Therapy Assistants ratified for licensure.

30 **TAB 8 Continuing Education Provider Applications**

31 **MOTION:** Mr. Spafford moved to approve the list of **30** continuing education providers/courses.
32 The motion was seconded by Ms. German and carried with a 4/0 vote.

33 **ACTION TAKEN:** **30** continuing education providers/courses ratified for licensure.

1 **PETITION FOR DECLARATORY STATEMENT**

2 **TAB 9** Cory Nichols, OTA 15172, Petition re: Surf Therapy as an Occupational Therapy
3 Practice Modality, Section 468.203, Definitions, Scope of Practice

4 Mr. Nichols was not present on the call.

5 Ms. Vizvary questioned what generated this request, as the occupational therapy practice
6 includes and allows many creative rehabilitative options regarding practice, from finger painting
7 to similar modalities. She continued that singling this specific modality out may be risking many
8 other inventive options to surface and stated that the petition was nebulous.

9 Dr. Banta agreed and stated her uncertainty to term this as a “modality”.

10 Ms. German stated she agreed and there was not enough information to decide regarding.

11 **MOTION:** Mr. Spafford moved to **deny** the Petition based on the Board’s discussion. The
12 motion was seconded by Ms. German and carried with a 4/0 vote.

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

14 **Tab 10 Rule Status Report:**

- 15 • Rule 64B11-4.003, F.A.C., Standards of Practice; Discipline
- 16 • Rule 64B11-2.003, F.A.C., Fees; Application

17 Mr. Jones presented the following rule status report for the month of February 2021.

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B11-4.003	Standards of Practice; Discipline	05/18/2020	06/29/2020 12/11/2020	07/14/2020	08/07/2020 Notice of Correction 08/13/2020 08/31/2020 – Tolloed 01/15/2021 Notice of Change 01/26/2021 JAPC letter		
64B11-2.003	Fees; Application	05/18/2020	06/01/2020 09/10/2020	06/10/2020 10/05/2020	10/21/2020 10/23/2020 – JAPC ltr. 10/26/2020 – Atty. Response	11/24/2020	12/14/2020

18 **Additional Discussion - 01/26/2021 JAPC Letter re: 64B11-4.003, F.A.C.**

19 Mr. Jones provided the Board with a synopsis of correspondence received from JAPC on
20 January 26, 2021. Mr. Den Beste addressed the Board during the discussion.

21 **MOTION:** Following further discussion, Mr. Spafford moved to accept the currently proposed
22 rule amendments, as presented, with no further changes. The motion was seconded by Ms.
23 Vizvary and carried with a 4/0 vote.

Notice of Proposed Rule

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE NO.: 64B11-4.003 RULE TITLE: Standards of Practice; Discipline

PURPOSE AND EFFECT: The proposed amendments adjust the minimum and maximum disciplinary guidelines to clarify to licensees the ranges of discipline that can be expected if a violation occurs.

SUMMARY: Substantial rewrite of disciplinary guidelines for Florida’s occupational therapists and occupational therapy assistants.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule.

A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: During discussion of the economic impact of this rule at its Board meeting, the Board concluded that this rule change will not have any impact on licensees and their businesses or the businesses that employ them. The rule will not increase any fees, business costs, personnel costs, will not decrease profit opportunities, and will not require any specialized knowledge to comply. This change will not increase any direct or indirect regulatory costs. Hence, the Board determined that a Statement of Estimated Regulatory Costs (SERC) was not necessary and that the rule will not require ratification by the Legislature. No person or interested party submitted additional information regarding the economic impact at that time.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 456.079, 468.204 FS.

LAW IMPLEMENTED: 456.072, 456.079, 468.217 FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE SCHEDULED AND ANNOUNCED IN THE FAR.

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Allen Hall, Executive Director, Board of Occupational Therapy/MQA, 4052 Bald Cypress Way, Bin # C05, Tallahassee, Florida 32399-3253.

THE FULL TEXT OF THE PROPOSED RULE IS:

Substantial rewording of Rule 64B11-4.003 follows. See Florida Administrative Code for present text.

64B11-4.003 Standards of Practice; Discipline.

(1) 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 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 must choose supervisor licensed under Chapter 468, Part III, Florida Statutes who is in good standing and without restriction or limitation on his or her license. 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

1 review all potential supervisors for adequacy. The Board may reject any proposed supervisor on the basis that he or
 2 she has previously been subject to disciplinary action against his or her license in this or any other jurisdiction, is
 3 currently under investigation, or is the subject of a pending disciplinary action. The supervisor must be actively
 4 engaged in the same or similar specialty area unless otherwise provided by the Board and be practicing within a
 5 reasonable distance of Respondent's practice, a distance of 50 miles unless otherwise specifically approved by the
 6 Board. The Board may reject any proposed supervisor for good cause shown.

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

9 (d) Licensure with conditions.

10 (e) Denial of licensure.

11 (f) Permanent Revocation.

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

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

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

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

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

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

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

22 (g) Evidence of fraud.

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

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

<u>VIOLATION</u>	<u>PENALTY RANGE</u>	
	<u>MINIMUM</u>	<u>MAXIMUM</u>
-	-	-
<u>(a) Attempting to obtain, obtaining, or</u> <u>renewing a license to practice a profession by</u> <u>bribery, fraudulent misrepresentation, or</u> <u>through an error of the Department or the</u> <u>Board.</u> <u>(Sections 468.217(1)(a), and 456.072(1)(h),</u> <u>F.S.)</u>		
<u>First Offense</u>	<u>6 months probation with</u> <u>conditions or certify application</u> <u>with restrictions and \$1,000 fine.</u>	<u>1 year suspension and</u> <u>\$5,000 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>Restriction of practice or license</u> <u>or denial of licensure and \$5,000</u> <u>fine.</u>	<u>Permanent revocation or</u> <u>denial of licensure and</u> <u>\$10,000 fine.</u>

32 However, if the violation is not through an error but is for making a false or fraudulent representation or bribery, the
 33 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 \$500 fine.

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

Second and Subsequent Offenses

Imposition of discipline which would have been if the substantive violation occurred in Florida and a \$2,500 fine.

Permanent 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

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 \$10,000 fine.

Permanent revocation and \$10,000 fine.

SECOND AND SUBSEQUENT OFFENSES

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.

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

Permanent revocation and \$10,000 fine.

Crimes involving fraudulent misrepresentation

(d) False, deceptive, or misleading advertising.

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

First Offense

Letter of concern and \$100 fine.

6 months probation with conditions and \$250 fine.

Second and Subsequent Offenses

6 months suspension and \$500 fine.

Restriction of practice or license and \$5,000 fine.

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

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

First Offense

Letter of concern and \$100 fine.

6 months probation with conditions and \$250 fine.

Second and Subsequent Offenses

6 months suspension and \$500 fine.

Restriction of practice or license and \$5,000 fine.

(f) Failure to report another licensee in violation.

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

First Offense

Letter of concern and \$100 fine.

6 months probation with conditions and \$500 fine.

Second and Subsequent Offenses

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

1 year suspension 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

1 year suspension and \$6,000 fine.

Permanent 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 \$500 fine.

Second and Subsequent Offenses

6 months suspension and \$1000 fine.

Restriction of practice or license 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.

<u>Second and Subsequent Offenses</u>	<u>6 months suspension, 1 year probation with conditions and \$2500 fine.</u>	<u>1 year suspension, 2 years probation with conditions and \$1,000 fine.</u>
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- 1 However, if the violation is for making a false or fraudulent representation, a fine of \$10,000 per count or offense.
- | | | |
|--|---|--|
| <u>(j) Kickbacks or split fee arrangements.
(Section 468.217(1)(j), F.S.)</u> | - | - |
| <u>First Offense</u> | <u>6 months suspension, 1 year probation with conditions and \$500 fine.</u> | <u>1 year suspension, 2 years probation with conditions and \$5,000 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>Restriction of practice or license and \$2,500 fine.</u> | <u>Permanent revocation and \$10,000 fine.</u> |
| <u>(k) Exercising influence to engage patient in sex.
(Section 468.217(1)(k), F.S.)</u> | - | - |
| <u>First Offense</u> | <u>1 year suspension, 4 years probation with conditions referral to PRN and \$5,000 fine.</u> | <u>Permanent revocation and \$7,500 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>Restriction of practice or license and \$7,500 fine.</u> | <u>Permanent revocation and \$10,000 fine.</u> |
| <u>(l) Deceptive, untrue, or fraudulent representations in the practice.
(Sections 468.217(1)(l), and 456.072(1)(a), F.S.)</u> | - | - |
| <u>First Offense</u> | <u>1 year probation with conditions and \$10,000 fine.</u> | <u>1 year suspension, 1 year probation with conditions and \$10,000 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>2 years suspension, 1 year probation with conditions and \$10,000 fine.</u> | <u>Revocation and \$10,000 fine.</u> |
| <u>(m) Improper solicitation of patients.
(Section 468.217(1)(m), F.S.)</u> | - | - |
| <u>First Offense</u> | <u>1 year probation with conditions and \$500 fine.</u> | <u>6 months suspension, 1 year probation with conditions and \$2,000 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>Restriction of practice or license and \$2,500 fine.</u> | <u>Permanent revocation and \$5,000 fine.</u> |
| <u>(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.)</u> | - | - |
| <u>First Offense</u> | <u>Letter of concern and \$300 fine.</u> | <u>6 months probation with conditions and \$1,000 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>1 year probation and \$1,000 fine.</u> | <u>6 months suspension, 1 year probation with conditions</u> |

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

<u>First Offense</u>	<u>Submit to mental/physical examination and impose conditions on practice.</u>	<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>
<u>Second and Subsequent Offenses</u>	<u>1 year suspension and then submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety.</u>	<u>Permanent Revocation and \$5,000 fine.</u>
<u>(u) Delegation of professional responsibilities to unqualified person. (Sections 468.217(1)(u), 456.072(1)(p), F.S.)</u>	-	-
<u>First Offense</u>	<u>1 year probation with conditions and \$1,000 fine.</u>	<u>6 months suspension, 1 year probation with conditions and \$3,000 fine.</u>
<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>
<u>(v) Violation of order, or failure to comply with subpoena. (Sections 468.217(1)(v), 456.072(1)(q), F.S.)</u>	-	-
<u>First Offense</u>	<u>Suspension until order or subpoena complied with and \$500 fine.</u>	<u>1 year suspension, 1 year probation with conditions and \$1,500 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>6 months suspension, 1 year probation with conditions and \$1,500 fine.</u>	<u>Permanent revocation and \$5,000 fine.</u>
<u>(w) Conspiring to restrict another from lawfully advertising services. (Section 468.217(1)(w), F.S.)</u>	-	-
<u>First Offense</u>	<u>Letter of concern.</u>	<u>Letter of concern and \$100 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>Letter of concern and \$500 fine.</u>	<u>Letter of concern and \$1,000 fine.</u>
<u>(x) Violating Chapters 468, 456, F.S., or any rules adopted pursuant thereto. (Sections 468.217(1)(x), and 456.072(1)(dd), F.S.)</u>	-	-
<u>First Offense</u>	<u>Suspension until law or rule complied with and \$500 fine.</u>	<u>1 year suspension, 1 year probation with conditions and \$1,500 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>Restriction of practice or license</u>	<u>Permanent revocation and</u>

	<u>and \$2,500 fine.</u>	<u>\$5,000 fine.</u>
<u>(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.</u> <u>(Section 456.072(1)(bb), F.S.)</u>	-	-
<u>First Offense</u>	<u>1 year probation with conditions and \$1,000 fine.</u>	<u>1 year suspension, 2 years probation with conditions and \$5,000 fine.</u>
<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>
<u>(z) Intentionally violating any rule adopted by the Board or the Department as appropriate.</u> <u>(Section 456.072(1)(b), F.S.)</u>	-	-
<u>First Offense</u>	<u>6 months suspension, 1 year probation with conditions and \$1,000 fine.</u>	<u>1 year suspension, 2 years probation with conditions and \$3,000 fine.</u>
<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>
<u>(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.</u> <u>(Section 456.072(1)(c), F.S.)</u>	-	-
<u>FIRST OFFENSE</u>		
<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 \$10,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>SECOND AND SUBSEQUENT OFFENSES</u>	<u>Restriction of practice or license <u>1 year suspension and \$5,000 fine.</u></u>	<u>Permanent revocation and \$10,000 fine.</u>

<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 year suspension and \$10,000 fine.</u>	- <u>Permanent revocation and \$10,000 fine.</u>
<u>Crimes involving fraudulent misrepresentation.</u>	<u>2 year suspension and \$10,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>(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.)</u>		
<u>First and Subsequent Offenses</u>	<u>Letter of Concern.</u>	<u>6 months probation with conditions and \$500 fine.</u>
<u>(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.)</u>		
<u>First Offense</u>	<u>1 year probation with conditions and \$1,000 fine.</u>	<u>1 year suspension and \$5,000 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>Restriction of practice or license and \$2,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>(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.)</u>		
<u>First Offense</u>	<u>1 year probation with conditions and \$10,000 fine.</u>	<u>1 year suspension and \$10,000 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>Restriction of practice or license and \$10,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>
<u>(ee) Improperly interfering with an investigation or inspection authorized by statute, or with any disciplinary proceeding. (Section 456.072(1)(r), F.S.)</u>		
<u>First Offense</u>	<u>6 months probation with conditions and \$1,000 fine.</u>	<u>1 year suspension and \$2,000 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>Restriction of practice or license and \$4,000 fine.</u>	<u>Permanent revocation and \$10,000 fine.</u>

(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.

Permanent ~~Revocation~~ and \$7,500 fine.

Second and Subsequent Offenses

Permanent revocation and \$7,500 fine.

Permanent revocation and \$10,000 fine.

(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

Letter of concern and \$500 fine.

1 year probation with conditions and \$500 fine.

(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.

1 year suspension and \$4,000 fine.

Second and Subsequent Offenses

Restriction of practice or license and \$4,000 fine.

Permanent revocation and \$10,000 fine.

(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.

Second or Subsequent Offense

Up to \$2000 fine, suspension until compliant with program followed by up to 5 years probation with conditions, or revocation.

(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 revocation 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

6 months probation with conditions \$500 fine.

1 year suspension and \$2,500 fine.

Second and Subsequent Offenses

1 year suspension and \$3,000.

Permanent revocation and \$5,000 fine.

(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 \$1,000 fine.

1 year suspension \$2,500 fine.

Second and Subsequent Offenses

1 year suspension \$5,000 fine.

Permanent revocation \$10,000 fine.

(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 revocation 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.

1 year suspension and \$1,000 fine.

<u>Second and Subsequent Offenses</u>	<u>1 year suspension and \$3,000 fine.</u>	<u>Permanent revocation and \$5,000 fine.</u>
<u>(oo) Testing positive for any drug on confirmed preemployment or employer ordered drug screening without lawful prescription.</u> <u>(Section 456.072(1)(aa), F.S.)</u>	-	-
<u>First Offense</u>	<u>Submit to mental/physical examination and impose conditions on practice.</u>	<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>
<u>Second and Subsequent Offenses</u>	<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 and \$1,000 fine.</u>	<u>Permanent revocation and \$3,000 fine.</u>
<u>(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.</u> <u>(Section 456.072(1)(pp), F.S.)</u>		
<u>First Offense</u>	<u>1 year probation with conditions and a \$5,000 fine.</u>	<u>6 months suspension, 6 months probation with conditions, and a \$10,000 fine.</u>
<u>Second and Subsequent Offenses</u>	<u>1 year suspension, 1 year probation with conditions, and a \$5,000 fine.</u>	<u>Permanent revocation and a \$10,000 fine.</u>

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

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

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

3 Rulemaking Authority 456.079, 468.204 FS. Law Implemented 456.072, 456.079, 468.217 FS. History–New 9-12-
4 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-
5 10-08, 8-5-10, 4-18-12, 1-10-17,_____.

6 NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Occupational Therapy
7 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Occupational Therapy
8 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: XXXXXXXXX
9 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: XXXXXXXXX

10 **REPORTS, IF ANY**

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

12 Mr. Spafford stated he had no report to present at this time, other than to highly commend the
13 Board members and OT's and OTA's within the state for their bravery, diligence and hard work
14 during this difficult pandemic time.

15 **Other Board Members**

16 None to report.

17 **TAB 12 Executive Director**

- 18 • **Cash Balance Report**
- 19 • **Expenditures by Function**

20 Presented as informational only.

21 **NEW BUSINESS**

22 **Tab 13 FOTA Discussion: Sharon Rosenberg, Chair, Government Affairs re: 2021** 23 **Legislation Impacting Occupational Therapy**

24 Ms. Rosenberg presented a legislative update regarding HB 543/SB 990 (2021), Occupational
25 Therapy (OT). This proposed legislation seeks to update and modernize the profession's current
26 scope of practice as found in Section 468.203, F.S., Definitions.

27 Ms. Rosenberg explained there had been difficulty with getting OT services covered by the
28 State of Florida Healthcare plan benefits at one time. Therefore, upon the Legislature's
29 feedback in comparing the OT scope of practice with Speech Therapy, Physical Therapy and
30 other therapy services under the state's healthcare benefits plan, the OT practice definition was
31 stated as too vague.

32 Ms. Rosenberg explained they worked diligently to prove OT's value and legitimacy as
33 requested and provided plenty of evidence-based practice and reasons why OT services

1 deserved endorsement. The result of their efforts was success in gaining approval for OT to be
2 included in the State of Florida’s healthcare plan benefits.

3 Since that time, approximately six years ago, they have continued to work on the language
4 modification and modernization with other states and AOTA to define the practice and adding
5 more details in the scope of practice definition. Ms. Rosenberg noted AOTA’s recent updates of
6 the guidelines for the scope of practice framework had been a source in preparing the proposed
7 legislation.

8 Ms. Vizvary applauded FOTA’s efforts and results and addressed Ms. Rosenberg regarding
9 specific areas in the Senate bill that appeared to have been deleted or changed that related to
10 other professions. Ms. Rosenberg stated she was not aware of any noted changes in the
11 sections noted. Mr. Hall and Ms. Jones also commented and summarized there to be somewhat
12 of confusion with the additions and deletions but ultimately appeared there were no changes.

13 Ms. Vizvary also questioned Ms. Rosenberg regarding whether related professional
14 associations had been contacted to ensure there was no conflict with the proposed updates.
15 Ms. Rosenberg confirmed this had been addressed and that they were very careful in the
16 verbiage so that there were no issues noted.

17 Mr. Spafford addressed Ms. Rosenberg regarding whether the FOTA anticipated passage of the
18 bill. Ms. Rosenberg briefly spoke of their activities towards that end and indicated they
19 anticipate passage.

20 **Infant/Toddler Developmental Specialists**

21 Ms. Rosenberg informed she had been made aware of concerns raised about the potential
22 encroachment and/or infringement of non-licensed Infant/Toddler Developmental Specialists
23 (ITDS) on occupational therapy practice in Florida. She noted these specialists receive
24 certification and work under Children’s Medical Services (CMS). CMS is a division of the Florida
25 Department of Health.

26 Ms. German and Dr. Banta addressed the Board regarding their knowledge of the issue, as
27 encountered in their professional practice as Occupational Therapists.

28 Mr. Jones and Mr. Hall mentioned there would not be an avenue by which the Board could
29 address this issue.

30 Ms. Rosenberg indicated she would follow-up with members who had expressed the same
31 concerns. Mr. Hall stated the communication/interaction would have to take place individually
32 with any members in their capacity as “licensees” versus in their capacity as “board members”.

33 **Tab 14 2021 Delegations of Authority**

34 The Delegation of Authority, reviewed and approved annually, facilitates administrative
35 efficiency and documents when individuals or entities have been delegated to act on behalf of
36 the Board.

37 **MOTION:** After discussion, Mr. Spafford moved to approve the Board’s Delegation of Authority
38 as presented. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

1 **Tab 15 2021 Conviction Record Guidelines**

2 The Conviction Record Guidelines, reviewed and approved by the Board annually, are used by
3 staff to assist in determining which licensure applications require individual consideration at the
4 quarterly meetings.

5 **MOTION:** After discussion, Mr. Spafford moved to approve the conviction record guidelines.
6 as presented. The motion was seconded by Ms. German and carried with a 4/0 vote.

7 **Tab 16 2021 Officer Elections**

Position	Current Assignment (as of 02/24/2020)	New Assignments 02/22/2021
Board Chair	Jim Spafford	Jim Spafford
Vice Chair	Dr. Caylee Banta	Dr. Caylee Banta
CE Committee Person	Dr. Caylee Banta Tameka German (back-up)	Dr. Caylee Banta Tameka German (back-up)
Legislative Liaison	Jim Spafford	Jim Spafford
Budget Liaison	Jim Spafford	Jim Spafford
Unlicensed Activity Liaison	Tameka German	Tameka German
Probable Cause Panel	Judith Johnson Dr. Caylee Banta	Judith Johnson Dr. Caylee Banta
Healthy Weight Liaison	Dr. Caylee Banta	Dr. Caylee Banta
Pro Bono CE Approval Liaison:	Elena Vizvary	Elena Vizvary

8 **MOTION:** After discussion, Ms. Vizvary made a motion to accept the current slate of officer and
9 liaison positions with no changes. The motion was seconded by Dr. Banta and carried 4/0.

10 **Tab 17 2022 Proposed Meeting Dates**

11 The Board accepted the following general business and probable cause panel meeting dates,
12 as presented.

- 13 • February 28, 2022
- 14 • May 16, 2022
- 15 • August 8, 2022
- 16 • November 7, 2022

17 **OLD BUSINESS**

18 **Tab 18 November 9, 2020, General Business Meeting Minutes**

1 **MOTION:** Mr. Spafford made a motion to approve the November 9, 2020 minutes with an
2 amendment to add prosecuting attorney, Chase Den Beste, in place of Ryan Sandy. The motion
3 was seconded by Ms. German and carried with a 4/0 vote.

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

5 **Tab 19 Staff Recognition**

6 Provided for information purposes only.

7 **ADJOURNMENT**

8 There being no further business the meeting adjourned at 10:54 a.m.