

The Florida Board of Occupational Therapy Practice

MINUTES

GENERAL BUSINESS MEETING

MAY 17, 2021

CONFERENCE CALL

1-888-585-9008

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



James Spafford, Board Chair

MINUTES
DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY PRACTICE
GENERAL BUSINESS MEETING
MAY 17, 2021

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

PROSECUTING ATTORNEY

Chase Dan Beste, Prosecuting

Dr. William Jacobs, M.D., Associate Medical,
Director, Professionals Resource Network (PRN)

COURT REPORTER

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

HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

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

Mr. Alonzo was present on the call and represented by legal counsel David A. Nunez, Esquire.

*Mr. Spafford was recused having participated on the Probable Cause Panel Meeting when this case was initially presented. Dr. Banta as Vice-Chair directed the case review.

Mr. Beste presented and summarized this case as an Informal Hearing for the Board.

Respondent was charged with the following violations:

- Count I: Section 456.072(1)(c), Florida Statutes (2017); a crime related to practice of, and/or the ability to practice, occupational therapy.
- Count II: Section 456.072(1)(II), concerning Payment Kickbacks in Connection with a Federal Health Care Program, a crime related to Healthcare Fraud; Florida Statutes (2017); and
- Count III: Section 456.072(1)(x), Florida Statutes (2017) including failing to report a guilty plea and/or conviction to the Board, in writing, within 30 days.

Respondent plead guilty to felonies of the Medicare HealthCare program, on July 31, 2018 excluding the respondent from participation in Medicare, Medicaid, and all other Federal health care programs for 5 years.

Disciplinary Guidelines for violations:

- Section 456.072(1)(c), Florida Statutes (2017): First Offense – Six months' probation with conditions and \$1,000.00 fine (64B11-4.003(4)(aa), F.A.C.).
- Section 456.072(1)(II), Florida Statutes (2017): First Offense – Revocation and a fine of \$10,000.00 (64B11-4.003(4)(mm), F.A.C.).
- Section 456.072(1)(x), Florida Statutes (2017): First Offense – Reprimand (64B11-4.003(4)(gg), F.A.C.).

The Department's Recommendation:

- Revocation of license,
- \$10,000 Administrative fine, to be paid within one year of entry of the Final Order, and
- reimbursement of costs in the amount of \$250.24, to be paid within one year of the Board's final order filing date.

MOTION: Dr. Banta made a motion to 1) accept the Investigative Report into evidence for purposes of imposing a penalty, 2) the Respondent was properly served and does not dispute the issues of material fact alleged in the Administrative Complaint, therefore, 3) adopting the findings of fact and conclusions of laws as set forth in the Administrative Complaint, and requested an informal hearing. The motion was seconded by Mrs. Vizvary and carried with a *3/0 vote.

MOTION: Dr. Banta made a motion to adopt the conclusions of laws as set forth in the Administrative Complaint which findings, constitutes a violation of the Practice Act. The motion was seconded by Mrs. Vizvary and carried with a *3/0 vote.

Mr. Nunez addressed the Board on Mr. Alonzo's behalf, and requested the Board consider

- not revoking Mr. Alonzo's license,

- proposed 3 years of probation to include monitoring with reports and auditing at the Board's preference,
- acceptance of the \$10,000 Administrative fine, requesting 24 months repayment and
- acceptance of reimbursement of costs in the amount of \$250.24, to be paid within one year of entry of the Final Order.

Mr. Dan Beste stated the Disciplinary guidelines for violations of set statutes include minimum penalties of revocation and \$10,000 Administrative fine. However, should the Board decide to impose less than the minimum, the Board would need to advise mitigating circumstances for such allowances, and the Department was opposed to extending the Administrative fine payment time to 24 months.

Mrs. Vizvary, stated, considering Mr. Alonzo's willingness and participation in the investigation as acceptable mitigating circumstances.

MOTION: Ms. German made a motion to impose the following penalties

- 5 years' probation with monitoring, to include quarterly financial reports,
- 10 hours of continuing education covering the ethics of occupational therapy practice, to be completed within one year of entry of the Final Order, and a
- \$10,000 Administrative fine, to be paid within 24 months of entry of the Final Order.

The motion was seconded by Mrs. Vizvary and carried with a *3/0 vote.

MOTION: Mrs. Vizvary made a motion for reimbursement of costs in the amount of \$250.24 to be paid within one year of entry of the Final Order. The motion was seconded by Dr. Banta and carried with a *3/0 vote.

Mr. Jones questioned when will Mr. Alonzo's Exclusions with the U.S. Department of Health and Human Services (HHS) end.

Mr. Beste stated the HHS exclusions letter was received in 2018, and exclusions are set for a mandatory 5 years. Mr. Hall instructed exclusions status may be verified through the Office of Inspector General's List of Excluded Individuals/Entities (LEIE), Database Search page.

Mr. Nunez and Mr. Alonzo both, thanked the Board, staff, and attorneys for their consideration of mitigating circumstances and leniency to Mr. Alonzo.

SETTLEMENT AGREEMENT

**TAB 2 Ajay Lakhanpal, OT, DOH Case# 2017-08582
 OT12959, File # 11957 (PCP Johnson & Banta)**

Mr. Lakhanpal was present on the call and represented by legal counsel, John Hornbeck, Esquire.

*Dr. Banta was recused having participated on the Probable Cause Panel Meeting when this case was initially presented.

MOTION: After discussion, Mr. Spafford made a motion to accept the proposed Settlement Agreement to impose the following penalties:

- A Reprimand,
- \$8,000 Administrative fine, to be paid within two years of entry of the Final Order,
- reimbursement of costs in the amount of \$2,548.83, to be paid within two years of entry of the Final Order,
- 10 hours of continuing education covering the ethics of occupational therapy practice, to be paid within one year of entry of the Final Order, and
- probation for a period of one year. As per the terms of Respondent's probation, Respondent shall either practice under a licensed Board approved Monitor, including submission of quarterly reports to the Board.

The motion was seconded by Mrs. German and carried with a *3/0 vote.

DETERMINATION OF WAIVER

TAB 3 Nicholas Ordonez-Rocha, OTA, DOH Case# 2019-32989 OTA17014, File # 9676 (PCP Johnson & Banta)

*Dr. Banta was recused having participated on the Probable Cause Panel Meeting when this case was initially presented.

Mr. Ordonez-Rocha was present on the call.

MOTION: Mr. Spafford made a motion to 1) accept the Investigative Report into evidence for purposes of imposing a penalty, and 2) that the Respondent was properly served and does not dispute the issues of material fact as set forth in the Administrative Complaint. The motion was seconded by Ms. Vizvary and carried with a *3/0 vote.

MOTION: Mr. Spafford made a motion to adopt the conclusions of laws as set forth in the Administrative Complaint, in which findings constitute a violation of the Practice Act. The motion was seconded by Mrs. Vizvary and carried with a *3/0 vote.

MOTION: After discussion, Mr. Spafford made a motion to accept the Department's recommendation to impose the following penalties:

- Suspension of license until compliant with the Professionals Resource Network (PRN) program, and
- reimbursement of costs in the amount of \$1,692.61, to be paid within one year of the Board's final order filing date.

The motion was seconded by Mrs. German and carried with a *3/0 vote.

Dr. William Jacobs, Associate Medical Director with PRN, advised Mr. Rocha to reconnect with PRN, and the process of can proceed again, to include an intake interview, evaluation for current diagnosis and recommendation.

PROSECUTOR'S REPORT

TAB 4 Den Beste, Prosecuting Attorney

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

DOH/PROSECUTOR'S REPORT BOARD OF OCCUPATIONAL THERAPY MEETING Meeting Date May 17, 2021

TO: Allen Hall, Executive Director
FROM: Chase E. Den Beste, Assistant General Counsel
DATE: April 16, 2021
RE: Current Open / Pending Occupational Therapy Cases

Total cases open/active in PSU: 22

| | |
|--------------------------------------|----|
| Cases in EAU: | 0 |
| Cases under legal review: | 7 |
| Cases where PC Recom. made: | 9 |
| Total Cases where PC has been found: | 3 |
| Cases in holding status: | 0 |
| Cases pending before DOAH: | 0 |
| Cases Agendaed for Board: | 3 |
| Cases on Appeal: | 0 |
| Year Old Cases: | 17 |

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

ADMINISTRATIVE PROCEEDINGS

INDIVIDUAL CONSIDERATIONS

TAB 5 Kari Anne Houser, File #11742, OTA by Endorsement

Ms. Houser was present on the call.

Ms. Houser's application was before the Board regarding her affirmative response to previous Criminal History. Ms. Houser addressed the Board.

MOTION: After discussion, Mrs. Vizvary made a motion to approve application for licensure. The motion was seconded by Mrs. German and carried with a 4/0 vote.

The Board Chair moved the agenda Out of Order to address Addendum TAB 15.

ADDENDUM

WITHDRAWAL OF NOTICE OF INTENT TO APPROVE LICENSURE WITH CONDITIONS

TAB 15 Shanna Marie Larocque, File # 19710, OT by Endorsement

During the February 22, 2021 meeting, the Board approved Ms. Larocque's application for licensure contingent upon successful completion of a Professionals Resource Network (PRN) evaluation.

Ms. Larocque completed the PRN evaluation and emailed a request to Withdraw her application for licensure, stating she could not financially meet PRN's requirement of entering a monitoring contract at his time.

Provided for the Board's review is an excerpt of the February meeting minutes and a copy of the filed Notice of Intent to Approve for Licensure with Conditions issued to Ms. Larocque following the May 2021 meeting.

MOTION: After discussion, Mr. Spafford made a motion to vacate the Notice of Intent to Approve for Licensure with Conditions based on receipt of Ms. Larocque's request to withdraw her application. The motion was seconded by Mrs. German and carried with a 4/0 vote.

APPLICANT RATIFICATION LISTS

TAB 6 Licensed Occupational Therapists

MOTION: Mr. Spafford moved to approve the ratification list of 311 Occupational Therapists. The motion was seconded by Mrs. Vizvary and carried with a 4/0 vote.

ACTION TAKEN: 311 Occupational Therapists ratified for licensure.

TAB 7 Licensed Occupational Therapy Assistants

MOTION: Mr. Spafford moved to approve the ratification list of 172 Occupational Therapy Assistants applicants for licensure. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

ACTION TAKEN: 172 Occupational Therapy Assistants ratified for licensure.

TAB 8 Continuing Education Provider Applications

MOTION: Mr. Spafford moved to approve the list of 14 continuing education providers/courses. The motion was seconded by Mrs. Vizvary and carried with a 4/0 vote.

ACTION TAKEN: 14 continuing education providers/courses ratified for licensure.

ADMINISTRATIVE PROCEEDINGS

RULES REVIEW AND DEVELOPMENT

TAB 9 Rule 64B11-4.003, F.A.C., Standards of Practice; Discipline

Mr. Jones addressed the Board, stating upon further review of the proposed Rule with JAPC and Prosecution Services attorneys the proposed recommendations include revised language for 3 of the violations, in Paragraphs (4)(b), (4)(6) and (4)(aa).

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

MOTION: Mr. Spafford moved to approve the proposed Rule amendments for Rule 64B11-4.003, F.A.C. to include three components regarding the proposed Rule:

- 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,
- 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 and
- nor a part of the Rule, should not be designated as a minor violation.

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

Notice of Proposed Rule

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE NO.: RULE TITLE:
64B11-4.003 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 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) 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

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

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.)

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|---------------------------------------|--|---|
| <u>First Offense</u> | <u>Letter of concern and \$500 fine.</u> | <u>Imposition of discipline which would have been if the substantive violation occurred in Florida.</u> |
| <u>Second and Subsequent Offenses</u> | <u>Imposition of discipline which would have been if the substantive violation occurred in Florida and a \$2,500 fine.</u> | <u>Permanent revocation and \$10,000 fine.</u> |

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

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

FIRST OFFENSE

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|--|---|---|
| <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> |

SECOND AND SUBSEQUENT OFFENSES

| | | |
|--|---|---|
| - | - | - |
| <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>(d) False, deceptive, or misleading advertising. (Section 468.217(1)(d), F.S.)</u> | - | - |
| <u>First Offense</u> | <u>Letter of concern and \$100 fine.</u> | <u>6 months probation with conditions and \$250 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>6 months suspension and \$500 fine.</u> | <u>Restriction of practice or license and \$5,000 fine.</u> |
| <u>(e) Advertising, practicing under a name other than one's own name. (Section 468.217(1)(e), F.S.)</u> | - | - |
| <u>First Offense</u> | <u>Letter of concern and \$100 fine.</u> | <u>6 months probation with conditions and \$250 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>6 months suspension and \$500 fine.</u> | <u>Restriction of practice or license and \$5,000 fine.</u> |
| - | - | - |

(f) Failure to report another licensee in violation.

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

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| <u>First Offense</u> | <u>Letter of concern and \$100 fine.</u> | <u>6 months probation with conditions and \$500 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>6 months probation with conditions and \$1,000 fine.</u> | <u>1 year suspension and \$5,000 fine.</u> |

(g) Aiding unlicensed practice.
(Sections 468.217(1)(g), and 456.072(1)(j), F.S.)

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|---------------------------------------|---|--|
| <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>1 year suspension and \$6,000 fine.</u> | <u>Permanent revocation and \$10,000 fine.</u> |

(h) Failure to perform legal obligation.
(Sections 468.217(1)(h), and 456.072(1)(k), F.S.)

| | | |
|---------------------------------------|---|---|
| <u>First Offense</u> | <u>Letter of Concern and \$100 fine.</u> | <u>6 months probation with conditions and \$500 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>6 months suspension and \$1000 fine.</u> | <u>Restriction of practice or license and \$5,000 fine.</u> |

(i) Failing to file a report as required.
(Sections 468.217(1)(i), and 456.072(1)(l), F.S.)

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|---------------------------------------|---|---|
| <u>First Offense</u> | <u>1 year probation with conditions and \$100 fine.</u> | <u>6 months suspension, 1 year probation with conditions and \$250 fine.</u> |
| <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 Revocation and \$1,000 fine.</u> |

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

(j) Kickbacks or split fee arrangements.
(Section 468.217(1)(j), F.S.)

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|---------------------------------------|--|---|
| <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> |

(k) Exercising influence to engage patient in sex.
(Section 468.217(1)(k), F.S.)

| | | |
|----------------------|---|---|
| <u>First Offense</u> | <u>1 year suspension, 4 years probation with conditions</u> | <u>Permanent revocation and \$7,500 fine.</u> |
|----------------------|---|---|

| | | |
|--|--|--|
| | <u>referral to PRN and \$5,000 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 and \$5,000 fine.</u> |
| | - | - |
| <u>(o) Exercising influence on patient for financial gain. (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. (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> |

(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.

Second and Subsequent Offenses

-
1 year suspension, 2 years probation with conditions and \$5,000 fine.

-
Permanent revocation and \$10,000 fine.

(r) Performing of experimental treatment without informed consent.

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

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 and Subsequent Offenses

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

-
Permanent revocation and \$10,000 fine.

(s) Practicing beyond scope permitted.

(Sections 468.217(1)(s), and 456.072(1)(o), F.S.)

First Offense

-
Letter of concern and \$100 fine.

-
6 months suspension, 6 months probation with conditions or denial and \$1,500 fine.

Second and Subsequent Offenses

-
Restriction of practice or license and \$1,500 fine.

-
Permanent revocation and \$7,500 fine.

(t) Inability to practice occupational therapy with skill and safety.

(Sections 468.217(1)(t), 456.072(1)(z), F.S.)

First Offense

-
Submit to mental/physical examination and impose conditions on practice.

-
Submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety, followed by probation with conditions.

Second and Subsequent Offenses

-
1 year suspension and then submit to mental/physical examination and suspension until able to demonstrate ability to practice with reasonable skill and safety.

-
Permanent Revocation and \$5,000 fine.

(u) Delegation of professional responsibilities to unqualified person.

(Sections 468.217(1)(u), 456.072(1)(p), F.S.)

First Offense

-
1 year probation with conditions

-
6 months suspension, 1 year

| | | |
|--|--|---|
| | <u>and \$1,000 fine.</u> | <u>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.</u> <u>(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.</u> <u>(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.</u> <u>(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 and \$2,500 fine.</u> | <u>Permanent revocation and \$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</u> | <u>1 year suspension, 2 years</u> |

| | | |
|---------------------------------------|---|--|
| - | <u>probation with conditions and \$1,000 fine.</u> | <u>probation with conditions and \$3,000 fine.</u> |
| - | <u>Restriction of practice or license and \$5,000 fine.</u> | <u>Permanent Revocation and \$10,000 fine.</u> |
| <u>Second and Subsequent Offenses</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.
(Section 456.072(1)(c), F.S.)

FIRST OFFENSE

| | | |
|--|---|---|
| <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> |

SECOND AND SUBSEQUENT OFFENSES

| | | |
|--|---|--|
| <u>Misdemeanor</u> | <u>Restriction of practice or license 1 year suspension and \$5,000 fine.</u> | <u>Permanent revocation and \$10,000 fine.</u> |
| <u>Felony</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> |

(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.)

First and Subsequent Offenses

Letter of Concern.

6 months probation with conditions and \$500 fine.

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

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

First Offense

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

1 year suspension and \$5,000 fine.

Second and Subsequent Offenses

Restriction of practice or license and \$2,000 fine.

Permanent revocation and \$10,000 fine.

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

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

First Offense

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

1 year suspension and \$10,000 fine.

Second and Subsequent Offenses

Restriction of practice or license and \$10,000 fine.

Permanent revocation and \$10,000 fine.

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

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

First Offense

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

1 year suspension and \$2,000 fine.

Second and Subsequent Offenses

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

Permanent revocation and \$10,000 fine.

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

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

First Offense

1 year suspension, 4 years probation with conditions referral to PRN and \$5,000 fine.

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.

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| <u>Second and Subsequent Offenses</u> | <u>1 year suspension and \$3,000.</u> | <u>Permanent revocation and \$5,000 fine.</u> |
| - | - | - |
| <u>(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.</u> | | |
| <u>(Section 456.072(1)(kk), F.S.)</u> | | |
| <u>First Offense</u> | <u>Letter of concern and \$1,000 fine.</u> | <u>1 year suspension \$2,5000 fine.</u> |
| <u>Second and Subsequent Offenses</u> | <u>1 year suspension \$5,000 fine.</u> | <u>Permanent revocation \$10,000 fine.</u> |
| - | - | - |
| <u>(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.</u> | | |
| <u>(Section 456.072(1)(ll), F.S.)</u> | | |
| <u>First and Subsequent Offenses</u> | <u>Permanent revocation and a fine of \$10,000, or in the case of application for licensure, denial of license.</u> | - |
| - | - | - |
| <u>(nn) Willfully failing to comply with Section 627.64194 or 641.513, F.S., with such frequency as to indicate a general business practice.</u> | | |
| <u>(Section 456.072(1)(oo), F.S.)</u> | | |
| <u>First Offense</u> | <u>Letter of Concern and \$500 fine.</u> | <u>1 year suspension and \$1,000 fine.</u> |
| <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>Submit to mental/physical</u> | <u>Permanent revocation and</u> |

| | | |
|---------------------------------------|---|----------------------|
| <u>Second and Subsequent Offenses</u> | <u>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>\$3,000 fine.</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. (Section 456.072(1)(pp), F.S.

| | | |
|----------------------|---|--|
| <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> |
|---------------------------------------|---|--|

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

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

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

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Occupational Therapy
 NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Occupational Therapy
 DATE PROPOSED RULE APPROVED BY AGENCY HEAD: XXXXXXXX
 DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: XXXXXXXX

REPORT OF ASSISTANT ATTORNEY GENERAL – Ronald “Tom” Jones
Tab 10 Rule Status Report:

- 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 April 2021 presented as informational only.

Notice of Proposed Rule

DEPARTMENT OF HEALTH

Board of Occupational Therapy

RULE NO.: 64B11-2.003

RULE TITLE: Fees; Application

PURPOSE AND EFFECT: The proposed rule amendment is intended to incorporate the revised application into the rule.

SUMMARY: The proposed rule amendment incorporates the revised application into the rule.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COST 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: 456.013, 468.221, 468.204 FS.

LAW IMPLEMENTED: 456.013, 456.0635, 468.209, 468.211, 468.221 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:

64B11-2.003 Fees; Application.

Each applicant for licensure shall pay an application fee in the amount of \$100.00 in the form of a check or money order payable to the Department of Health. This application fee is nonrefundable and may not be used for more than one year from the original submission of the application. After one year from the date of the original submission of an application, a new application and new fee shall be required from any applicant who desires to be considered for licensure. The application shall be made on ~~the "State of Florida Application for Licensure as an Occupational Therapist or Occupational Therapy Assistant,"~~ DH-MQA 1152 (revised ~~05/2002/19~~), hereby adopted and incorporated by reference, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-10456>, or <http://www.floridasoccupationaltherapy.gov/applications/app-ot-ota.pdf>, or you may choose to apply through the on-line application located at <http://floridasoccupationaltherapy.gov/licensing/>.

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

NAME OF PERSON ORIGINATING PROPOSED RULE: Board of Occupational Therapy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Board of Occupational Therapy

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 10, 2020

REPORTS, IF ANY

TAB 11 Board Chair, Jim Spafford

None to report

Other Board Members

None to report

TAB 12 Executive Director

- Cash Balance Report
- Expenditures by Function Report

The above reports were presented as informational only.

Mr. Hall gave the Board a brief legislative update to include:

The proposed legislation seeking to update and modernize the profession's current scope of practice as supported by Florida Occupational Therapy Association did not pass.

New grounds for discipline for all Boards and professions addressed in Bills, HR241 and SB1394 are signed and awaiting passage.

Mr. Hall discussed face to face meetings after the Governor's lifting of COVID restrictions to resume for the August 9, 2021 meeting and thereafter. Therefore, upon advisement to adhere to social distancing protocols Staff has proceeded to schedule the next meeting of the Board to meet in Tallahassee at the Holiday Inn, at 2003 Apalachee Parkway. The Board members each noted their agreement to resume fac to face meetings.

OLD BUSINESS

Tab 13 February 22, 2021, General Business Meeting Minutes

MOTION: Mr. Spafford made a motion to approve the February 22, 2021 minutes as presented. The motion was seconded by Dr. Banta and carried with a 4/0 vote.

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

Tab 14 Staff Recognition

Provided for information purposes only.

ADJOURNMENT

There being no further business the meeting adjourned at 11:00 a.m.