

MINUTES DRAFT

**The Florida
Board of Occupational Therapy Practice**

GENERAL BUSINESS MEETING

August 8, 2022

**Holiday Inn Tallahassee, East Capitol - University
2003 Apalachee Parkway
Tallahassee, FL 32301
Office Telephone Number: (850) 245-4373**



James Spafford, Board Chair

**DEPARTMENT OF HEALTH
BOARD OF OCCUPATIONAL THERAPY PRACTICE
GENERAL BUSINESS MEETING
BY TELEPHONE CONFERENCE CALL
AUGUST 8, 2022**

DRAFT MINUTES

Holiday Inn Tallahassee, East Capitol - University
2003 Apalachee Parkway
Tallahassee, FL 32301
Office Telephone Number: (850) 245-4373

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 council's website.

1 **Call to Order**

2 **9:00 a.m. EST** - Call to Order - General Business Meeting

3 Mr. Spafford, Chair, called the general business meeting to order at 9:00 a.m. Those
4 present for all or part of the meeting, included the following:

5 **MEMBERS PRESENT**

6 James F. Spafford, Consumer Member, Chair
7 Tameka German, OT, Vice-Chair
8 Elena Vizvary, OT
9 Dr. Caylee Banta, OT
10

STAFF PRESENT

Allen Hall, Executive Director
Anna King, Program Administrator
Ahna Chamlis, Regulatory Specialist III
Keyna Page, Regulatory Specialist II
Deborah Boutwell, Regulatory Specialist II

11 **ASSISTANT ATTORNEY GENERAL**

12 Ronald "Tom" Jones, Board Counsel
13 Kara H. Aikens, Board Counsel

PROSECUTING ATTORNEY

Chase Den Beste, Prosecuting
Collie Nolen, Prosecuting

14 **COURT REPORTER**

15 American Court Reporting
16 3213 Hargill Drive
17 Orlando, FL 32806
18 (407)896-1813
19 reportingorlando@aol.com

20 **GENERAL BUSINESS**

21 **DISCIPLINARY PROCEEDINGS**

22 **SETTLEMENT AGREEMENT**

23 Mr. James Spafford has been recused from discussion on Tabs 1 – 3 due to participation on the
24 Probable Cause Panel.

1 **TAB 1 Robyn Joy Laub, OT8386, DOH Case # 2021-08575 File # 7061,**
2 **(PCP Johnson & Spafford)**

3 Ms. Laub was present on the call and not represented by legal counsel. Ms. Laub was sworn in
4 by the court reporter.

5 Ms. Laub's case was before the Board for Allegation(s) of two counts of Failing to keep written
6 records justifying the course of treatment of the patient, including, but not limited to, patient
7 histories, examination results, and test results.

8 Allegations:

9 Count I- Section 468.217(1)(n), Florida Statutes (2019)

10 Count II- Section 468.217(1)(n), Florida Statutes (2019)

11 Mr. Den Beste, Prosecuting Attorney, presented the case, and a proposed Settlement
12 Agreement to the Board, which includes the following terms:

- 13 • Letter of Concern against their license
- 14 • \$500 fine paid within 2 years, \$250 due each year and the remainder due within the last
15 year
- 16 • \$3,000 costs paid within 2 years, \$1,500 due each year and the remainder due within
17 the last year
- 18 • 8 hours of CE on Medical Documentation and Record-Keeping within 90 days

19 **MOTION:** Following discussion, Ms. German moved to accept the proposed Settlement
20 Agreement. Dr. Banta seconded the motion, which carried 3/0.

21 **TAB 2 Deirdre Laborde, OTA13918, DOH Case # 2019-46415, File # 6766,**
22 **(PCP Johnson & Spafford)**

23 Ms. Laborde was present on the call and represented by legal counsel, Ricky Strong & Jeffrey
24 S. Howell, P.A, 2898-6 Mahan Drive Tallahassee, FL 32308. Ms. Laborde and Mr. Ricky Strong
25 were both sworn in by the court reporter.

26 Ms. Laborde's case was before the Board for an alleged violation of Section 468.217(1)(l),
27 Florida Statutes (2019), for making deceptive, untrue, or fraudulent representations in the
28 practice of occupational therapy.

29 Allegation(s):

30 Section 456.072(1)(l), Florida Statutes (2019) Making deceptive, untrue, or fraudulent
31 representations in the practice of occupational therapy or employing a trick or scheme in the
32 practice of occupational therapy if such scheme or trick fails to conform to the generally
33 prevailing standards of treatment in the occupational therapy community.

34 Mr. Den Beste, Prosecuting Attorney, presented the case, and a proposed Settlement
35 Agreement to the Board, which includes the following terms:

- 36 • Suspension of license for 1 year

- 1 • \$5,000 costs paid within 3 years, \$1,500 due each year and the remainder due within
- 2 the last year
- 3 • 15 hours of CE on Laws and Rules and Ethics within 90 days

4 **MOTION:** Following discussion, Ms. German moved to accept the proposed Settlement
5 Agreement. Dr. Banta seconded the motion, which carried 3/0.

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

7 **TAB 3 Larry D. Jackson, OTA13963, DOH Case # 2019-26842, File # 7072,**
8 **(PCP Johnson & Spafford)**

9 Mr. Jackson was present on the call and not represented by legal counsel. Mr. Jackson, we
10 sworn in by the court reporter.

11 Mr. Jackson's case was before the Board for an alleged violation of Section 468.217(1)(l),
12 Florida Statutes (2018), for making deceptive, untrue, or fraudulent representations in the
13 practice of occupational therapy.

14 Mr. Den Beste, presented and summarized the case presented as a Hearing Not Involving
15 Disputed Issues of Material Fact.

16 Allegation(s):
17 Section 456.072(1)(l), Florida Statutes (2018) Making deceptive, untrue, or fraudulent
18 representations in the practice of occupational therapy or employing a trick or scheme in the
19 practice of occupational therapy if such scheme or trick fails to conform to the generally
20 prevailing standards of treatment in the occupational therapy community.

21 Disciplinary Guidelines:
22 Rule 64B11-4.003(4)(1), Florida Administrative Code, (2018) provides the following disciplinary
23 guidelines for an initial offense of section 468.217(1)(l), Florida Statutes (2018): from 1 year
24 probation and a \$10,000 fine up to 1 year suspension and 1 year probation with conditions and
25 a \$10,000 fine.

26 Mr. Den Beste, Prosecuting Attorney, presented the case, and proposed penalties to the Board,
27 which includes the following terms:

- 28 • \$1,000 fine paid within 2 years
- 29 • 6 hours of Continuing Education in Laws & Rules within 90 days

30 Mr. Den Beste, Prosecuting Attorney, presented to the Board the cost assessment which
31 includes the following:

- 32 • \$3,059.81 costs to be paid within 2 years, \$1,500 due each year and the remainder due
33 within the last year

34 **MOTION:** Ms. German moved to accept the investigative report into evidence and find that the
35 Respondent was properly served and has requested this informal hearing and adopt the
36 findings and facts as set forth in the administrative complaint. The motion was seconded by Dr.
37 Banta and carried 3/0.

1 **MOTION:** Ms. German made a motion to adopt the findings of fact and conclusions of Law as
 2 set forth in the Administrative Complaint and that this constitutes a violation of the Florida
 3 Statutes, as set forth in the Administrative Complaint. The motion was seconded by Ms. Vizvary
 4 and carried 3/0.

5 **MOTION:** After discussion, Ms. German made a motion to impose the stated penalties. The
 6 motion was seconded by Ms. Vizvary and carried 3/0.

7 **MOTION:** Ms. German made a motion to accept the departments motion to assess costs as
 8 stated in the record. The motion was seconded by Dr. Banta and carried 3/0.

9 **PROSECUTOR’S REPORT**

10 **TAB 4 Den Beste, Prosecuting Attorney**
 11 Mr. Den Beste presented the following Prosecutor’s Report

<u>Case Status</u>	<u>Report Date</u> 11/08/2021	<u>Report Date</u> 5/16/2022	<u>Report</u> <u>Date</u> 8/8/2022
Total cases open/active in Prosecution Services:	13	14	12
Cases in Emergency Action Unit:	0	2	2
Cases under legal review:	1	2	1
Cases awaiting supplemental investigation/expert opinion:	0	2	0
Cases with PCP recommendation:	6	3	5
Cases where probable cause has been found:	3	0	2
Cases where DOAH has been requested:	1	0	1
Cases pending before DOAH:	0	0	0
Cases on Board meeting agendas:	2	7	3
Cases on appeal:	0	0	0
Cases older than one year: *	9	0	0

12 **MOTION:** Mr. Spafford moved to allow Prosecution Services to continue prosecuting
 13 year-old cases. Ms. German seconded the motion, which carried 4/0.

14 **ADMINISTRATIVE PROCEEDINGS**

15 **APPLICANT RATIFICATION LISTS**

1 **TAB 5 Licensed Occupational Therapists**

2 **MOTION:** Mr. Spafford moved to approve the ratification list of **242** Occupational Therapists.
3 Ms. German seconded the motion, which carried 4/0.

4 **ACTION TAKEN:** **242** Occupational Therapists ratified for licensure.

5 **TAB 6 Licensed Occupational Therapy Assistants**

6 **MOTION:** Mr. Spafford moved to approve the ratification list of **143** Occupational Therapy
7 Assistants applicants for licensure. Ms. German seconded the motion, which carried 4/0.

8 **ACTION TAKEN:** **143** Occupational Therapy Assistants ratified for licensure.

9 **TAB 7 Continuing Education Provider Applications**

10 **MOTION:** Mr. Spafford moved to approve the list of **4** continuing education providers/courses.
11 Ms. German seconded the motion, which carried 4/0.

12 **ACTION TAKEN:** **4** continuing education providers/courses ratified for licensure.

13 **RULES REVIEW AND DEVELOPMENT**

14 **TAB 8 Rule 64B11-4.001, F.A.C., Use of Prescription Devices**

15 During the May 2022 meeting, Board staff requested review of this rule in light of
16 correspondence received regarding the lack of availability of prescription device certification
17 courses as well as concerns regarding the training requirements. Following discussion, the
18 Board approved the following language:

19 Didactic **or performance training** may be in person or from interactive, real-time courses. An
20 interactive, real-time course may be a web-based, satellite transmitted, ~~telephone~~ or video
21 conference, or online instruction program that allows or requires the licensee to interact in real
22 time, including live chat, with the instructor during the presentation of the program ~~or in a~~
23 question and answer session upon completion of the program.

24 Upon further reflection on this language after the Board meeting, it appeared there might have
25 been an unintended error in that this language allows for *performance training* to be conducted
26 other than in-person, which appears to be in conflict with Paragraphs (1)(d), (2)(d) and (3)(d) of
27 the rule.

28 Based on the Board's discussion, it appeared the intent was only to allow the *didactic* portion of
29 the training to be made available in an online, interactive, real-time format. If that is the case,
30 the Board is asked to consider approving the following amended proposed rule language:

31 "Didactic training ~~or performance training~~ may be in person or from interactive, real-time
32 courses. An interactive, real-time course may be a web-based, satellite transmitted or video
33 conference, or online instruction program that allows or requires the licensee to interact in real
34 time, including live chat, with the instructor during the presentation of the program."

1 **MOTION:** Following discussion, Ms. Vizvary moved to approve the rule amendments as stated
 2 in the language presented. Ms. German seconded the motion, which carried 4/0.

3 **MOTION:** Mr. Spafford moved the proposed amendments would not have an adverse impact on
 4 small business nor have an economic impact on government or any other entity in excess of
 5 \$200,000 within one year after the implementation of the rule. That the proposed amendments
 6 should not be designated as a minor violation. As well as there should not be a sunseting
 7 provision. Ms. Vizvary seconded the motion, which carried 4/0.

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

9 **TAB 9 Rule Status Report:**

10 Mr. Jones presented the status of Board rules currently under development per April 2022
 11 report.

Rule Number	Rule Title	Date Rule Language Approved by Board	Date Sent to OFARR	Rule Development Published	Notice Published	Adopted	Effective
64B11-5.001	Requirements for License Renewal of an Active License; Continuing Education	11/08/2021	11/15/2021	11/23/2021	12/08/2021(RN) 12/09/2021 JAPC ltr 12/09/2021 Attorney Response 12/09/2021 TOLLED 12/13/2021 JAPC Ltr 12/23/2021 Attorney Response 05/27/2022 Notice of Change	06/22/2022	07/12/2022

12 Mr. Jones presented the Annual Regulatory Report to the Board.

13 **MOTION:** Following discussion, Mr. Spafford moved to approve the Annual Regulatory Report.
 14 Ms. German seconded the motion, which carried 4/0.

15 **REPORTS IF ANY**

- 16 **TAB 10 Board Chair, Jim Spafford**
 17 • **Other Board Members**

18 Informational item.

- 19 **TAB 11 Executive Director**
 20 • Cash Balance Report
 21 • Expenditures by Function Report

22 Mr. Hall presented the quarterly cash balance and expenditures by function reports.

1 **NEW BUSINESS**

2 **TAB 12 Discussion: Rule 64B11-1.002, F.A.C., Other Business Involving the Board**
3 **re: Board Member Compensation for Conference**

4 Ms. Aikens presented to the Board that according to the Florida Statute 456.001(4) a board
5 member or former board member serving on a probable cause panel shall be compensated \$50
6 for each day in attendance at an official meeting of the board and for each day of participation in
7 any other business involving the board. Each board shall adopt rules defining the phrase “other
8 business involving the board,” but the phrase may not routinely be defined to include telephone
9 conference calls that last less than 4 hours. A board member also shall be entitled to
10 reimbursement for expenses pursuant to s. 112.061. Travel out of state shall require the prior
11 approval of the State Surgeon General.

12 After discussion, it was understood by the board that compensation will be allowed for any
13 meeting more than 4 hours.

14 **OLD BUSINESS**

15 **TAB 13 May 16, 2022, General Business Meeting Minutes**

16 **MOTION:** Mr. Spafford moved to approve the May 16, 2022, minutes as presented. Ms.
17 German seconded the motion, which carried 4/0.

18 **OTHER BUSINESS AND INFORMATION**

19 **TAB 14 Spring 2022 State Affairs Newsletter**

20 Informational only.

21 **TAB 15 Spotlight on ULA Newsletter**

22 Informational only.

23 **TAB 16 Overdose Crisis Materials**

24 Informational only.

25 **TAB 17 Florida Prescription Drug Monitoring Program (PDMP) Monthly Report**

26 Informational only.

27 **TAB 18 Staff Recognition**

28 Informational only.

29 **ADJOURNMENT**

30 There being no further business the meeting adjourned at 9:40 a.m.