

Minutes of the August 29, 2023 Board of Occupational Therapy Meeting

1. ROLL CALL

Mary Walsh-Sterup, Chairperson, called the meeting of the Board of Occupational Therapy to order at 9:02a.m. on May 23, 2023, in the Goldenrod conference room at the Nebraska State Office Building located at 301 Centennial Mall South, Lincoln, Nebraska. In accordance with Neb. Rev. Stat. § 84-1411 of the Nebraska Open Meetings Act, copies of the agenda were e-mailed to the Board members and other interested parties, posted on the DHHS website at <https://dhhs.ne.gov/licensure/Pages/Agendas-and-Minutes.aspx>, and posted in the Licensure Unit on August 17, 2023.

Walsh-Sterup announced that this is an open meeting, and the Open Meetings Act is posted.

Members Present: The following members answered roll call:

Mary Walsh-Sterup, Chairperson
Dr. Marcus Doughty, Vice-Chairperson
Dr. Alfred Bracciano, Secretary

Members Absent:

Nancy Peetz, Member

Others Present:

T.J. O'Neill, Assistant Attorney General
Claire Covert-ByBee, Program Manager
Amy Blinston, Health Licensing Coordinator
Suzanna Glover-Ettrich, DHHS Legal
Jeff Newman, DHHS Investigations
Melissa Kimmerling, Nebraska Occupational Therapy Association
Kristen Neville, American Occupational Therapy Association

2. ADOPTION OF AGENDA

MOTION: Doughty moved, seconded by Bracciano to adopt the agenda. Voting aye: Bracciano, Doughty, and Walsh-Sterup. Voting nay: None. Motion carried.

3. REAFFIRMATION OF MAIL BALLOT

Covert-ByBee indicated there were two mail ballots since the last Board meeting. The Board reaffirmed the mail ballot approving the 5.23.2023 meeting minutes. Walsh-Sterup, Peetz, and Doughty voted to approve the minutes as written. Bracciano did not vote. The minutes were approved by a quorum of votes on 6.5.2023.

These minutes were approved by the Board of Occupational Therapy via mail ballot on 9.11.2023.

The Board reaffirmed the mail ballot recommending issuance of an Occupational Therapist license to Brittany Tompsett. Voting aye: Bracciano, Doughty, and Peetz. Walsh-Sterup did not vote. The recommendation was approved by a quorum of votes on 6.28.2023.

4. INVESTIGATIONAL & CONFIDENTIAL INFORMATION/REPORTS – CLOSED SESSION

MOTION: Bracciano moved, seconded by Doughty to move into closed session at 9:04a.m. to hear discussions regarding confidential information and to protect the reputation of individuals named or referenced in such discussions. Voting aye: Doughty, Walsh-Sterup, and Bracciano. Voting nay: None. Motion carried.

5. BOARD RECOMMENDATIONS ON APPLICATIONS – OPEN SESSION

The Board returned to open session at 9:23a.m.

The Board did not make any recommendations.

6. OTA PHYSICAL AGENT MODALITIES DISCUSSION

The Nebraska Occupational Therapy Association inquired about the original historical reason that OTA's are limited to utilizing superficial thermal modalities only. Covert-ByBee shared that [statute 38-2530 \(2\)](#) specifies that limitation. The Nebraska Physical Therapy Association had expressed concerns with allowing OTA's to utilize physical agent modalities. Kimmerling stated the AOTA created a modernized model practice act in 2022, and several questions have come up regarding OTA's and the use of physical agent modalities. Kimmerling indicated there is confusion regarding statute 38-2530 (3) which states that occupational therapists cannot delegate the evaluation, reevaluation, treatment planning, and treatment goals for physical agent modalities to an occupational therapy assistant, when the assistants themselves can be certified to use superficial agent modalities. Kimmerling indicated the existing regulations and statutes are ambiguous and need clarification. Neville added that in rural communities where the number of licensed occupational therapists are limited, physical agent modalities are being left out of treatment plans because OTA's cannot execute those interventions. Covert-ByBee advised that without proposed legislation, there really isn't an opportunity for the Board to discuss and render an opinion on the matter.

7. BOARD OPINION ON DRY NEEDLING

The Nebraska Occupational Therapy Association inquired about the Board's opinion on dry needling. Covert-ByBee shared the 2016 Nebraska Attorney General's opinion that dry needling is not currently within the scope of practice for OT's and OTA's. Athletic trainers recently went through the credentialing review process and have expanded their scope of practice to specifically include dry needling. Physical therapists utilize fine wire electromyography, which is analogous to dry needling, while chiropractors utilize acupuncture as part of their practice. Discussions about the overlap between professions led to the request for the AG's opinion in 2016. Kimmerling shared the AOTA's policy E18, dated April 2023, includes information on new and emerging interventions. The AOTA asserts that dry needling, physical agent modalities, and other techniques can be utilized to support occupational

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performance. Covert-ByBee added that the Nebraska Board of Occupational Therapy operates in an advisory capacity and does not have the statutory authority to render legally binding opinions.

8. 407 CREDENTIALING REVIEW PROCESS

Walsh-Sterup asked if anyone had further questions on the 407 Credentialing Review Process as it was mentioned during the dry needling and physical agent modality discussions. Doughty stated that clarification on the topic of wound care and the use of sharps could be addressed in that process.

9. OT COMPACT

Covert-ByBee stated that the Compact has been working to develop a final budget, rules on Data Set Requirements and Definitions, and OTCC Bylaw updates. The OTCC has joined two other licensure compact commissions to explore a joint request for proposal to develop a licensure compact database. Only the software framework would be shared among compact states, not the specific data. More information can be found at otcompact.org. All committee meetings are subject to Open Meetings Act and anyone may attend.

10. EXECUTIVE ORDER 23-13

Covert-ByBee indicated this executive order was issued on July 26, 2023, and extends the previous provisions of EO 22-04. This order expires January 1, 2024, and allows the Department to continue processing and issuing OT licenses, even though the FBI has not yet approved the Nebraska statutory language to run the criminal background check by fingerprint. Once the FBI does approve that NE statutory language, individuals issued after July 21, 2022, will need to submit to a full criminal background check by fingerprint to participate in the OT Compact. More information will be sent out as it is available.

11. LEGISLATIVE UPDATE

Covert-ByBee stated that the bill introduced to amend the language for the criminal background check statute was amended into LB227, as were about 30 other legislative bills. LB574, the Let Them Grow Act, involves care for transgender youth. Questions regarding LB574 and how it impacts various professions should be sent to Dr. Timothy Tesmer, Chief Medical Officer.

12. NEW LICENSURE DATABASE UPDATE

Covert-ByBee advised that the Department secured a contract with System Automation to stabilize the current licensure database. The project kicked off on June 15, 2023, and is slated to be 100% operational by January 1, 2025. The stabilized database will be cloud-based instead of terminal-based, which will allow for great stability. The Department is simultaneously working on creating a request for proposal (RFP) to expand the online services for licensure.

13. SCHEDULE MEETING DATES FOR 2024

The Board scheduled meetings for January 30, and August 27, 2024.

These minutes were approved by the Board of Occupational Therapy via mail ballot on 9.11.2023.

13. APPLICATION PROCESSING REPORT (APR)

Blinston stated that the application processing report was prepared for informational purposes only.

14. ADJOURNMENT

There being no further business, the meeting adjourned at 10:30a.m.

Respectfully submitted,

Dr. Alfred Bracciano, Secretary