

AGENDA ITEM 5

Review of policy issues identified in 2016 Sunset Report that have not been addressed and possible recommendation(s) to Board regarding prioritization and response on the status of those previous issues in the Board's 2021 Sunset Report

Issues identified in 2016 report are attached for review.

Information below copied from 2016 Sunset Report

Section 10 – Board Action and Response to Prior Sunset Issues

1. Background information concerning the issue as it pertains to the board.
2. Short discussion of recommendations made by the Committees during prior sunset review.
3. What action the board took in response to the recommendation or findings made under prior sunset review.
4. Any recommendations the board has for dealing with the issue, if appropriate.

ISSUE # 1: Webcasting meetings.

Background

In its 2012 report to the Legislature, the Board reported it "...has only webcast a few of its meetings; however it plans to take advantage of this service more often beginning in 2012." The Committee is concerned about the Board's lack of use of technology in order to make the content of the Board meetings more available to the public.

2012 Committee Staff Recommendation

The Board should inform the Committee of the reason that they have been unsuccessful in webcasting meetings. The Committee recommends that the Board utilize webcasting at future meetings in order to allow the public the best access to meeting content, activities of the Board and trends in the profession.

2016 Response

Meetings that have been webcast were performed by the Department of Consumer Affairs' Office of Public Affairs. During the reporting period efforts were made to provide the best access to meeting content, activities of the Board, and trends in the profession. However, webcasting took place subject to availability of DCA staff. At its August 2016 meeting, the Board selected its 2017 meeting dates. By selecting the meeting dates earlier in the year, the Board is hopeful to have more of its meetings webcast in 2017, and on-going.

ISSUE # 2: What is contributing to low customer satisfaction ratings?

Background

In order to ensure that licensees and other members of the public have a venue to report satisfaction or dissatisfaction with the Board, the Board includes a Customer Satisfaction Survey on its website.

2012 Committee Staff Recommendation

Due to the high percentage of dissatisfaction with the Board's assistance, the Committee requests that the Board provide additional training to its staff regarding customer relations and complaint resolution techniques.

2016 Response

A review of the comments provided in this report indicates that the majority of negative comments pertained to the advanced practice application process and the license application review process, including the complaint about the inability to renew a license online.

The Board acknowledges there is always room for improvement and will strive to achieve better results. Backlogs with the review of advanced practice applications have been reduced and processing timeframes are improving. Typically surveys like the Board's capture data of the extremely satisfied and dissatisfied stakeholder. With only 51 people completing the survey in a four-year period, the Board asks the committee to consider that there are more than 16,000 licensees. The Board processed more than 20,500 renewals in a three-year period and processes more than 1,400 license applications per year.

ISSUE # 3: Publishing Citations.

Background

Licensees and unlicensed individuals who violate the provisions of the Occupational Therapy Practice Act or its regulations are issued citations if the violation is not egregious enough to warrant formal disciplinary action. Citations are public information. However, citations are only disclosed if requested as part of a license verification or public inquiry on behalf of a licensee. Unlike disciplinary actions, which are available on a licensee's records when using the Web License Lookup (WLL) feature, and are also displayed on the Disciplinary Action page of the Board's website, citations are not displayed to the public in this manner.

2012 Committee Staff Recommendation

The Committee recommends that the Board provide citation information on the licensee's record in WLL and/or post the citation information on the Board's Disciplinary Action section of its website.

2016 Response

The Board has adopted the 2012 Sunset Committee's recommendation to provide citation information on a licensee's record. The policy decision was made at its November 7, 2013, meeting. Board staff was unable to implement the policy change until January 2016 due to a freeze on programming changes to the licensing and enforcement system that was in use prior to BreZE.

Since BreZE has become operational in January 2016 Board staff has been posting PDF copies of citations on license records as they are being issued. Board staff plans to go back and incorporate previously issued citations on license records, consistent with the Board's citation retention schedule set forth in 16 CCR section 4145, as time and resources permit. This task will be aided by the recent augmentation of six additional positions the Board was authorized through the BCP process.

ISSUE # 4: Continuous Query.

Background

In its recent report to the Committee, the Board requested they be able to charge each applicant for licensure a fee to cover the cost of the query. The Board indicated: "...While this bill died in committee, the Board hopes that this issue will be addressed in a future bill by the Joint Legislative Sunset Review Committee."

2012 Committee Staff Recommendation

The Committee recommends that the Board create a plan for purchasing the continuous query service which may include sponsoring legislation to address how the cost should be covered.

2016 Response

'Continuous Query' is a service provided by the National Practitioner Data Bank that monitors enrolled licensees for adverse actions and medical malpractice payment history 24 hours a day/365 days per year for a one time enrollment fee which is then subject to annual renewal. Previously the Board utilized this important tool by facilitating the review of applicants (holding a license(s) issued by another state) past disciplinary actions as well as ensuring the Board is notified of any future disciplinary actions taken against the licensee by another reporting entity.

The Board utilized the Continuous Query function for applicants as well as licensees placed on probation during the period May 2010 to December 2013. During that period it spent approximately \$13,208.25 on 2,317 initial enrollees and renewals. The Board only received two "hits" or reports as a result of the query. Based on the lack of "hits" or reports received it did not appear to be the most efficient use of Board funds. It's important to note that few other occupational therapy state regulatory agencies report actions to the data bank.

The Board has proposed legislation adding the authority to collect the NPDB query fee. However, in the event this does not happen, the applicant qualification process protects the public's interests. Applicants are required to submit fingerprints for background checks with the Department of Justice and Federal Bureau of Investigation. Individuals that have been licensed in another state(s) applying for a California license must submit a license verification or letter of good standing from each state agency were they hold a license that indicates if their license has ever been disciplined by that agency.

ISSUE # 5: Should the Board require a jurisprudence and/or ethics course requirement for licensees?

Background

According to the Board's recent report to the Committee, the majority of the complaints received by the Board involve ethical issues, documentation, supervision (or lack thereof), aiding and abetting unlicensed practice, and failing to follow the requirements of a licensee, such as failing to complete the continuing education required for license renewal or providing a timely address change. The Committee is concerned about the high number of complaints relating to practice issues.

2012 Committee Staff Recommendation

The Committee recommends that the Board outline a plan to include a jurisprudence and/or ethics course as a required continuing education course for its licensees.

2016 Response

Rather than develop a state jurisprudence examination, the Board suggests an alternative: Require all applicants for licensure and renewing licensees to provide an ‘attestation’ on the application. This attestation would reflect the licensee they have read the laws and regulations relating to occupational therapy practice in California. Since a recent report issued by the Little Hoover Commission highlighted the importance of establishing defensible licensing requirements, the Board is awaiting further information from the DCA’s Office of Professional Examination Services on the costs of an occupational analysis and examination audit.

ISSUE # 6: Why does the Board have such a high percentage of stipulated settlements?

Background

Each of the licensing boards within DCA has protection of the public as its stated priority in the law. Its disciplinary decisions must always place the protection of the public as its top priority. As such, boards establish disciplinary guidelines for specific violations and adopt them through their regulatory process.

Boards have the authority to resolve a disciplinary matter through negotiated settlement, typically referred to as a “stipulated settlement.” A stipulated settlement may be pursued in place of holding a lengthy administrative hearing on a disciplinary matter.

The disciplinary guidelines are established with the expectation that Administrative Law Judges hearing a disciplinary case, or proposed settlements submitted to the board for adoption will conform to the guidelines. However, the Citizen Advocacy Center, a national organization focusing on licensing regulatory issues nationwide, notes: “It is not uncommon for licensing boards to negotiate consent orders [stipulated settlements] 80% of the time or more.”

2012 Committee Staff Recommendation

The Committee believes that a licensing board should critically examine its practices to ensure that it is acting in the public’s interest when they enter into a stipulated settlement. The Committee recommends that the Board provide an explanation for their high percentage of stipulated settlements. Additionally, the Board should indicate if any of the cases that were resolved via stipulated settlements settled for lower standards than the Board’s disciplinary guidelines require.

2016 Response

The disciplinary guidelines are established with the expectation that Administrative Law Judges hearing a disciplinary case, or proposed settlements submitted to the board for adoption will conform to the guidelines. If there are mitigating factors, such as a clear admission of responsibility by the licensee early on in the process, clear willingness to conform to board-ordered discipline, or other legal factors, a decision or settlement might vary from the guidelines.

All cases are reviewed individually based on the nature of the allegations, case strengths and weaknesses, and analysis of any danger that continued practice by the licensee could or would pose to consumers. In virtually every case the Board has settled with probationary terms, it has gotten terms and conditions that are consistent with recommended penalties outlined in its Disciplinary Guidelines. Often the Board gets stronger and more specific terms to correct and remediate the issues that gave rise to the disciplinary action when entering into settlements. Stipulated settlements almost always result in faster resolutions to cases and save hearing costs. Please also note that 31.6% (6 of the 19) stipulated settlements reported in the last three fiscal years resulted in the practitioners surrendering their license.

ISSUE # 7: Budgetary constraints.**Background**

The Occupational Therapy Act provides authority for the Board to regulate the profession of occupational therapy. Included in the Board's basic authority is the ability for the Board to conduct administrative duties including the collection of data regarding the workforce, and to maintain relationships with professional associations in order that the Board stays abreast of developments in the profession.

2012 Committee Staff Recommendation

The Committee recommends that the Board detail what enforcement related over expenditures have led to the redirection of funds. In addition, the Committee is aware that the DCA allows travel for certain Board activities. As such, the Committee recommends that the Board consult with DCA to clarify what type of travel is permitted.

2016 Response

The Department of Consumer Affairs and boards have been following policies regarding travel as detailed in the Governor's Executive Order B-06-11. This order states that no travel, either in-state or out-of-state, is permitted unless it is mission critical or there is no cost to the state. Mission critical is defined as travel that is directly related to, enforcement responsibilities, auditing, revenue collection, a function required by statute, contract or executive directive, or job-required training necessary to maintain licensure or similar standards required for holding a position.

ISSUE #8: License portability for military personnel and their spouses.**Background**

The Committee is supportive of the Federal and State efforts to assist licensed military personnel and their family members enjoy better license portability. The Committee encourages licensing Boards to examine their ability to exempt licensees from CE and licensing fee requirements during duty as well as waiving any licensing fees that have accrued upon the end of their duty term.

2012 Committee Staff Recommendation

The Board should make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses. The Board should also consider waiving the fees for reinstating

the license of an active duty military licensee. Consistent with the ACOTE and NBCOT policy for OTAs, the Board should also examine the possibility of accepting military training and experience towards licensure for OTs.

2016 Response

The Occupational Therapy Act does not include specific standards for addressing military personnel who are licensed OTs or OTAs. However, the Accreditation Council for Occupational Therapy (ACOTE) and the National Board for Certification in Occupational Therapy (NBCOT) recognize military education and training as a qualifying educational program for OTAs. A review of the qualification requirements for occupational therapists serving in the armed services, indicates that completion of an accredited occupational therapy degree program and passage of the NBCOT examination is required.

The Board complies with BPC § 115.5 and expedites the licensure application process for applicants who provide evidence they are married to, or in a domestic partnership or other legal union with an active duty member of the Armed Forces who is assigned to a duty station in California. Standard operating procedures for the Board to process and review an application for licensure are that within 30-days of receipt of the application, the applicant is provided written notice whether the application is approved or deficient (16 CCR section 4112).

For applications falling under the provisions of BPC § 115.5, when the board is made aware of the military status, the Board self-imposes a 10-day goal to provide written notice to the applicant regarding the status of the application. (The Board's 10-day goal is not established or incorporated in regulation.) The Board does not currently have a way to track the number of applicants who seek expedited processing under this provision but the numbers are few. Upcoming enhancement to the BreZE system will allow staff to identify applications that require expedited processing pursuant to BPC § 115.5 and better provide statistical data in the future.

In accordance with parameters set forth in BPC § 115.5, the Board waives biennial renewal fees and the delinquent fee that may accrue during the time a licensee is called to active duty as a member of the United States Armed Forces or National Guard. A licensee can also request a continuing competence (continuing education) exemption provided in 16 CCR section 4163(b) if they have been absent from California for a period of a year or longer due to military service.

ISSUE #9: Defining Occupational Therapy.

Background

In its recent report to the Committee, the Board indicated that it wishes to update the definition of the practice of occupational therapy in order to accurately reflect what OTs and OTAs actually do. The Board indicated that the current definition is limited to hands-on treating clinicians and needs to be amended to a more broad reference that addresses the variety of roles a licensee may undertake.

2012 Committee Staff Recommendation

The Board should draft language and submit it to the Committee in order that the Committee can understand specifically how the Board desires to expand the definition.

2016 Response

The Board believes the current definition of occupational therapy is adequate and does not need any amendments.

ISSUE #10: Are the minimum education requirements equal to the advanced practice requirements?

Background

When the Board was first established, there were no national minimum education standards required by occupational therapy education programs relating to the areas of swallowing assessment, evaluation, or intervention, the use of physical agent modalities, or hand therapy. Thus, these practice areas were identified as 'advanced practice' since the practice areas were considered beyond the skills of a new graduate. Therefore, additional post-graduate requirements were established.

2012 Committee Staff Recommendation

The Committee requests that the Board provide them with additional information, e.g. data from the Accreditation Council for Occupational Therapy Education (ACOTE), about the advanced practice requirements and the minimum education standards.

2016 Response

The Board will monitor minimum educational requirements established by ACOTE relative to California's advanced practice requirements. The Board will consider this issue when new information becomes available.