

## **AGENDA ITEM 9**

### **DISCUSSION ON THE SUNSET REVIEW PROCESS AND POSSIBLE SUNSET COMMITTEE MEMBER APPOINTMENT.**



## TELECONFERENCE SUNSET REVIEW COMMITTEE

### MEETING HIGHLIGHTS

Tuesday, November 16, 2021

- Meeting was called to order at 4:00 pm and all committee members were present. The committee members are:
  - Sharon Pavlovich – Chairperson
  - Richard Bookwlater
  - Denise Miller
  - Beata Morcos
- The Committee reviewed and unanimously approved the October 14, 2021, Committee meeting minutes.
- The Committee reviewed a draft copy of the 2021 Sunset Report. Listed below by section, are the recommendations of the Committee for Board review and approval.

#### Section 1- Background and Description of the Board and Regulated Profession

- Paragraph 1 - delete “Chapter 697/00 (SB 1046)”.
- Paragraph 4, Sentence 1 - add “, habilitation” to paragraph 3, sentence 1. The sentence will read:

“Occupational therapy licensees provide important health, habilitation and rehabilitation....”

The committee unanimously voted to recommend the Board adopt Section 1 with the requested changes.

#### Section 2 Performance Measures and Customer Satisfaction Surveys

Section 2, Question 7, Sentence 3 - move the sentence “Due to the subscription expiration, the prior survey responses could not be retrieved.” to the end of Paragraph 1.

Section 2, Question 7 - add a new paragraph at the conclusion of the section that would advise the Legislature of how the Board is mitigating the problem. This would include information that the Board's Survey Monkey subscription was renewed and the survey would be added to the Board's website. Staff also indicated that this information would be sent to licensees that the Board has an email address on file and posted on social media.

The committee unanimously voted to recommend the Board adopt Section 2 with the requested changes.

### Section 3 Fiscal and Staff

The committee unanimously voted to recommend the Board adopt Section 3 as prepared.

### Section 4 Licensing Program

- Section 4 Title - Delete the backslash that proceeds the "Section 4" title at the top of the page.
- Question 18 - Delete the small #1 in the actual question that follows the word "licensing"; there is not a footnote in this section to warrant the use of such an indicator.
- Question 21a, Paragraph 3 - delete "Each applicant is also required to disclose any past misdemeanor or felony convictions, regardless of the age of the conviction or whether the matter has been expunged."
- The committee unanimously voted to recommend the Board adopt Section 2 with the requested changes.

### Section 5 Enforcement Program

- Question 34, second to last paragraph - add italics to "The Probation Intake Target Time is 10 days,".
- Question 34, last paragraph - add italics to "The Probation Violation(s) Target Time is 10 days,".
- Question 41, Paragraph 3 – delete the hyphen from "on-line"
- Question 41, Paragraph 3 – add "at search.dca.ca.gov" following "online".

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The committee unanimously voted to recommend the Board adopt Section 5 with the requested changes.

### Section 6 Public Information Policies

The committee unanimously voted to recommend the Board adopt Section 6 as prepared.

### Section 7 Online Practice Issues

- Question 58, Paragraph 1 was revised to read:

“The Board is unaware of current, accurate methods of measuring the prevalence of online occupational therapy services otherwise known as services provided via ‘telehealth.’ At this point in time, the Board has not received a complaint or report of unlicensed practice pertaining to occupational therapy services provided via telehealth. The Board anticipates an increase in the provision of occupational therapy services via telehealth, due to reimbursement and regulatory changes at the state and federal levels, intended to increase access.”

- Question 58, Paragraph 2 – the first sentence was revised to read:  
“The Board currently regulates occupational therapy services provided via telehealth....”

The committee unanimously voted to recommend the Board adopt Section 7 with the requested changes.

### Section 8 Online Practice Issues

- Remove the extra numeral 63. found under Question 62. and the remaining numbering will correct itself and end at 70 in Section 10.

The committee unanimously voted to recommend the Board adopt Section 8 with the requested changes.

### Section 9 Current Issues

The committee unanimously voted to recommend the Board adopt Section 9 as prepared.

### Section 10 Board Actions and Responses to COVID-19

- Newly renumbered Question 68 – add language that refers to the use of Executive Orders N 29-20 issued March 17, 2020, and N 08-21 issued June 11, 2021, as a means for the Board to not be required to identify teleconference locations for Board and Committee meetings.

The committee unanimously voted to recommend the Board adopt Section 10 with the requested changes.

### Section 11 Board Actions and Responses to COVID-19

- Issue #1, Sentence 4 - revise to read:

“However, when implementing the renewal fee increases in 2017, the statute specified the renewal fee...”

- Issue #5, Paragraph 2 - revise to read:

“The Board did not follow up on the “Fee Bill Worksheet” after the last....”

- Issue #5, Paragraph 3, Sentence 1 – remove “only”

The committee unanimously voted to recommend the Board adopt Section 11, Issues 1 and 5 with the requested changes.

- Issue #9, Paragraph 1, Sentence 4 – remove the extra “Q” in “QBIRT”.
- Issue #10, Paragraph 1, Sentence 2 – remove “a request”
- Issue #10, Paragraph 1, Sentence 3 – update “license” to “licensee”.
- Issue #11 - add a new paragraph at the end of the section that would advise the Legislature of how the Board is mitigating the problem, including that the Board’s Survey Monkey subscription was renewed and the survey would be added to the Board’s website. Staff will email this information to licensees that the Board has an email address on file and posted on social media.

The committee unanimously voted to recommend the Board adopt Section 11, Issue 11 with the requested changes to match those made in Section 2, Question 7.

The committee unanimously voted to recommend the Board adopt Section 11 in total with the requested changes and granted staff non substantive change authority.

### Section 12 New Issues

- Question 1 – The committee unanimously voted to recommend that the Board adopt the request to address Section 11, Issues 1, 3 and 12 under this question.
- Question 2 – The committee did not identify any additional new issues identified in this report and approved the 3 issues that were provided by staff.
- Question 3 – Staff to present an instructive and constructive addition for Board review and approval surrounding the court reporting cost increase.
- Question 3 – The committee unanimously voted to recommend that the Board adopt the addition of language to inform the Legislature that the Board is looking to review or revisit issues surrounding the Advanced Practice requirements in light of the national standards.

### Section 13 Attachments

The committee unanimously voted to recommend the Board adopt Section 13 as prepared.



**DRAFT**

**TELECONFERENCE SUNSET REVIEW COMMITTEE  
 MEETING MINUTES**

**Wednesday, October 14, 2021**

**3:00 pm – Committee Meeting**

**1. Call to order, roll call, establishment of a quorum.**

Chairperson Sharon Pavlovich called the meeting to order at 3:00pm. Board staff called the roll and a quorum was established.

Committee Members Present

Board President – Sharon Pavlovich  
 Board Secretary – Beata Morcos  
 Board Member – Richard Bookwalter  
 Board Member – Denise Miller

Committee Members Absent

N/A

Board Staff Present

Heather Martin – Executive Officer  
 Jody Quesada Novey – Associate Analyst

**2. Chairperson opening remarks.**

Chairperson Sharon Pavlovich welcomed everyone in attendance and thanked Board staff for their meeting preparation.

**3. Public Comment Session for items not on the Agenda.**

Public Comment

There was no public comment.

**4. Review and approval of the September 1, 2021, Committee meeting minutes.**

Three non substantive fixes were requested by the committee. Executive Officer Heather Martin made the changes in real time.

- Beata Morcos moved to accept the September 1, 2021, Committee meeting minutes.
- Richard Bookwalter seconded the motion.

Public Comment

There was no public comment.

### Committee Member Votes

Richard Bookwalter: Yes  
Sharon Pavlovich: Yes  
Denise Miller: Yes  
Beata Morcos: Yes

**The motion carried.**

#### **5. Review of draft 2021 Sunset Report prepared to date and possible recommendation to Board to approve.**

The Committee reviewed drafts of several sections of the 2021 Sunset Report. Listed below by section, are the questions the Committee recommended the Board approve the response in the 2021 Sunset Report

##### *Section 1*

The background was reviewed, including a description of occupational therapy. The committee decided to revisit this topic at the end of the meeting.

***The committee revisited the description of occupational therapy following their review of the Performance Measures.***

Mr. Bookwalter presented his offered definition and the fact that he borrowed from AOTA. The committee requested that Mr. Bookwalter email a copy of his work to Ms. Martin so that she could share it via WebEx and the committee could discuss the document. Ms. Miller asked that “either in person or through telehealth services” or a similar phrase be added to the bottom of paragraph 2.

Ms. Martin made the changes real time and suggested that if the language was acceptable to the committee she would strike all the entries she made in Section 1 of the report, copy and paste the current suggestions and give credit to AOTA.

- Richard Bookwalter moved to present Ms. Martin’s melded ‘real time’ language to the Board at the following week’s meeting.
- Beata Morcos seconded the motion.

### **Public Comment**

There was no public comment.

### Committee Member Votes

Richard Bookwalter: Yes  
Sharon Pavlovich: Yes  
Denise Miller: Yes  
Beata Morcos: Yes

**The motion carried.**

The responses to questions 1, 2, 3 (excluding third bullet regarding regulatory amendments), 4 (with edits), and 5, were approved.

- Richard Bookwalter moved to empower Board staff to incorporate the changes made in Section 1.
- Denise Miller seconded the motion.

### **Public Comment**

There was no public comment.

#### **Committee Member Votes**

Richard Bookwalter: Yes  
Sharon Pavlovich: Yes  
Denise Miller: Yes  
Beata Morcos: Yes

**The motion carried.**

### *Section 2*

Section 2 was reviewed. Due to several suggested edits, this information was to be revised by staff, brought back in its entirety and reviewed by the Committee at its next meeting.

### *Section 3*

The committee accepted the responses to questions 3, 4, 5, 6, 7 and 10. Question 8 needed a non-substantive change regarding “on-going” and Question 10 required removal of an unneeded sentence in the 3rd line beginning with “licensee’s birth month...”

- Richard Bookwalter moved to accept Section 3, responses to questions 3-8 and 10 with the discussed changes and required Board staff to bring back question 9 after the proposed edits were made.
- Beata Morcos seconded the motion.

### **Public Comment**

There was no public comment.

#### **Committee Member Votes**

Richard Bookwalter: Yes  
Sharon Pavlovich: Yes  
Denise Miller: Yes  
Beata Morcos: Yes

**The motion carried.**

### *Section 5*

The committee directed Board staff per question and as follows:

Question 34 – The response was incomplete and would be brought back for review.



Question 35 – The response was incomplete and would be brought back for review.

Question 36 – The response was incomplete and would be brought back for review.

Question 37 – The committee accepted the response as presented.

Question 38 – The response to 38a was accepted, however, the response to 38b needed a response provided. Board staff would update the response. The committee decided further review was unneeded.

Question 39 – Board staff to bring the response back in its entirety with graphs.

Question 40 - The committee accepted the response as presented.

Question 41 - Board staff to update the response and bring back for review.

Question 42 – “patient” to be replaced with “consumer” throughout and put the bullet points in a paragraph format.

Question 43 - The committee accepted the response as presented.

Question 44 – Label the table as ‘figures’ and add a clear numbering system and bring back.

Question 45 – Remove the row that includes “Amount collected by FTB...”. The committee decided further review was unneeded.

Question 46 and 47 - The committee accepted these responses as presented.

Question 48 – Remove the typo (ge) and update the format of the table to make it clear and consistent, bring back for review.

Question 49 – Make the same changes as requested for Question 48 and bring back for review.

Question 50 and 51 - The committee accepted the responses as presented.

Question 52 – Eliminate the table, the committee decided further review was unneeded.

- Richard Bookwalter moved to accept the responses to questions 37, 38, 40, 43, 45, 46, 47, 50, 51, and 52 as presented and to ask Board staff to make discussed changes to Questions 34, 35, 36, 39, 41, 42, 44, 48, and 49 and bring back to the committee for review.
- Beata Morcos seconded the motion.

#### **Public Comment**

There was no public comment.

### Committee Member Votes

Richard Bookwalter: Yes  
Sharon Pavlovich: Yes  
Denise Miller: Yes  
Beata Morcos: Yes

### **The motion carried.**

- The performance measures (PM) with information for fiscal years 2016-17 through 2020-2021 were reviewed. Several suggestions were provided to improve the display and presentation of the various data in the PM graphs.
  - Richard Bookwalter moved to have Board staff to bring back the attachments with the proposed changes.
  - Denise Miller seconded the motion.

### **Public Comment**

There was no public comment.

### Committee Member Votes

Richard Bookwalter: Yes  
Sharon Pavlovich: Yes  
Denise Miller: Yes  
Beata Morcos: Yes

### **The motion carried.**

## **6. Review and discussion of possible legislative proposals to recommend the Board include in the 2021 Sunset Report.**

Ms. Martin stated that adding the discussion of possible legislative proposals to recommend to the Board was premature and the committee would need recommendations from the next Board meeting so that the Sunset committee could review them.

Chairperson Sharon Pavlovich thanked everybody in attendance for their participation and taking time out of their busy schedules.

The meeting adjourned at 5:49 pm.



## **TELECONFERENCE SUNSET REVIEW COMMITTEE MEETING MINUTES**

**Wednesday, September 1, 2021**

### **4:00 pm – Committee Meeting**

1. Call to order, roll call, establishment of a quorum.

California Board of Occupational Therapy (Board) President Sharon Pavlovich called the meeting to order at 4:10pm. Board staff called the roll and a quorum was established.

Committee Members Present

Board President – Sharon Pavlovich  
 Board Secretary – Beata Morcos  
 Board Member – Richard Bookwalter  
 Board Member – Denise Miller

Committee Members Absent

N/A

Board Staff Present

Heather Martin – Executive Officer  
 Jody Quesada Novey – Associate Analyst

2. Chairperson opening remarks.

Chairperson Sharon Pavlovich welcomed all that were present and expressed her appreciation for the Committee members. Ms. Pavlovich welcomed Board member Richard Bookwalter as a newly appointed participant and thanked him for his willingness to lend his expertise along with that of Board members Denise Miller and Beata Morcos all of whom participated on the prior Sunset Review Committee.

3. Public Comment Session for items not on the Agenda.

Lauren Lopez with the Occupational Therapy of California’s (OTAC) Advocacy and Government Affairs introduced herself.

OTAC Executive Director Karen Polastri and Lisa Test, OTD both chose to introduce themselves.

There was no further public comment.

4. Review of draft 2021 Sunset Report prepared to date and possible recommendation to Board to approve.

Executive Officer Heather Martin explained that she provided the report in its entirety so that everyone could get an idea not of just what was updated but what is expected by the Legislature. Ms. Martin added that the questions included were from the last Sunset Review because the Legislature had not yet sent the updated questions which could result in small changes to the report layout.

Ms. Martin reported that many of the tables have been completed with the required data and that Board staff is determining how to produce the performance measures information to comply with ADA requirements. Ms. Martin divulged that she was hoping that the Committee would agree to review the report on a page by page basis and make 'real time' changes.

### **Public Comment**

Karen Polastri asked if the prior meeting minutes are available and if the report Ms. Martin is referencing is available for public consumption.

Ms. Martin explained that the last Sunset report was in 2016 and is available under Forms and Publications on the Board's website. The May Board meeting minutes were not yet available because the Board had not yet voted on them.

Board member Denise Miller asked if Ms. Martin would explain the dates and logistics.

Ms. Martin explained that the Senate Business and Professions Committee had not sent a letter that included updates nor the questions, but she could confirm that a bound, printed copy of the report is due to the Legislature by December 1<sup>st</sup>. Ms. Martin pointed out that in order to meet the due date she hoped that the Board would be able to approve and adopt the Sunset report at the November 4-5, 2021, Board meeting.

Ms. Miller asked for clarification of on page 4, item #2 in the materials as it pertains to being unable to hold a meeting due to quorum issues.

Ms. Martin replied that the last time a meeting had to be cancelled was back in 2008 or 2009.

Board Secretary Beata Morcos expressed her concern that the legislature could change the questions in the upcoming weeks and that would be a waste of time and unfair to Board staff.

Ms. Martin commented that history has proven that changes to the information or questions are usually minimal and that she felt the completed work would still be productive.

Board member Richard Bookwalter asked that the Committee to go back to page one, section one to review the definition of occupational therapy (OT) because definitions evolve over time. He also noted that since a new OT Practice Framework was introduced after the Board's 2016 Sunset Report, it might be a good idea to cross check.

The Board members concurred with Mr. Bookwalter.

### **Public Comment**

A member of the public asked Mr. Bookwalter to clarify if he was referring to the definition of faculty who are teaching.

Mr. Bookwalter clarified that he was only referring to the definition of occupational therapy and was requesting the definition that was provided in the 2016 be reviewed in as it may have been updated since the last report. The Committee wants to ensure that the Sunset Report has the most updated definition of OT.

Ms. Martin clarified that the information in the 2016 Sunset Report was a description of occupational therapy in lay persons terms. It is a description that the Sunset Report Committee and Board chose to use.

The Committee decided to take more time to think about the topic of the occupational therapy definition to be used in the Sunset Report and asked that Board staff provide the Practice Act and the Occupational Therapy Framework at the next meeting even though some of the Committee members will be doing their own comparisons prior to the next meeting.

Ms. Pavlovich asked that the OT Practice Framework document be forwarded to Ms. Martin since Board staff does not have membership access.

The next item in the Sunset Report was the Legislative bills, included on pages 5-9 that affected the Board. Ms. Martin stated that the bills and descriptions came from the Department of Consumer Affairs (DCA) thus she was certain that it was accurate. Ms. Martin stated that the table following the bills will be completed after DCA provides the data.

Ms. Martin addressed the reference on page 9, item 4, and the fact that she is still trying to get the finalized version of the workforce study completed by the California Community Colleges Chancellor's Office

Ms. Martin clarified that regarding page 9, item 5, that over the years the Board has been a member of different associations, including American Occupational Therapy Association, Occupational Therapy Association, the Council on Licensing, Enforcement and Regulation, but is not currently a member of any association.

Mr. Bookwalter commented that Sections 2, 3, and 4 which spanned pages 10-31 seemed like the Committee wouldn't have a lot of contribution besides review.

### **Public Comment**

Karen Polastri commented that she was trying to navigate the Sunset Report.

The Committee summarized the Action items for Board staff as:

- Copy and pasting the Practice Act
- Providing the Practice Framework
- Replacing "he or she" with gender neutral language throughout the document.

Mr. Bookwalter stated that work completed on pages 24-27 regarding Board licensure processes looked current and acceptable thus far.

The Committee decided to move to Agenda Item 5 in the interest of time and to revisit the Sunset Report again next meeting.

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.

Executive Officer Heather Martin reported that the information provided was a copy/paste from 2012 and 2016 to be used as a reference. Board staff would delete the 2016 responses to 2012 issues and develop a current response to 2016 issues. Ms. Martin confirmed that the Board would be responsible for responding to each issue and any new issues that need to be addressed.

The Committee agreed to take in to account the 2016 submitted responses to address the issues because some of language continues to be a valid.

### **Issue #1 Webcasting meetings.**

Ms. Martin reported that Webcasting is a matter of availability so choosing the upcoming years' meeting dates at the end of the year prior and requesting webcasting soon after is going to increase the Board's chances of getting on the webcasting calendar.

***Committee member Denise Miller lost connection at 5:15 p.m. The Committee continues to have a quorum.***

### **Issue #2 What is contributing to low customer satisfaction ratings?**

Ms. Martin reported to the Committee that when Board staff reached out to the DCA Internet team to retrieve the Customer Service survey data it was discovered that the survey came off the Board's website in 2019. Board staff is going to have to check with Survey Monkey to find if it's possible to retrieve any information submitted from 2016 up to 2019.

### **Issue #3 Publishing Citations.**

Ms. Martin reported that Board staff will be able to respond to this issue and say that it is no longer a concern because the public is able to access citation records when they use the "Verify a License" link.

Mr. Bookwalter asked if Board staff could add the timeframe in which a citation is attached to the licensing record.

Ms. Martin confirmed that posting took place the same day and that she would add that to the narrative she provided.

### **Issue #4 Continuous Query.**

Ms. Martin stated that the update would include the fact that Board staff submitted a modification to BreEZe to include an NPDB query fee to accommodate this issue. Board

staff participated in the NPDB program for a few years which was time consuming and only received two reports of adverse actions from the databank. Ms. Martin recommended that the response to Issue 4 state that Board staff was responsive, but the Continuous Query proved to be useful or cost effective given the workload.

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

Ms. Martin explained that this would have required a regulation package to enact and that unfortunately it fell off the radar.

The Committee agreed to take responsibility, apologize, and commit to addressing the issue in the future.

**Issue #6 Why does the Board have such a high percentage of stipulated settlements?**

Ms. Martin stated that she was comfortable responding similarly to the 2016 response because she believed that Stipulated Settlements are effective, quicker in the imposition of discipline and cost effective.

**Issue #7 Budgetary Constraints.**

Ms. Martin reminded the Committee that she saved funds over the course of three years to mitigate the cost of the office move and to not have to request a budget change proposal. The Board has limited and/or eliminated travel when directed by the Administration. In terms of recognizing the value of WebEx Board, staff saw the increase in access, greater attendance, and increased participation at meetings. Ms. Martin stated that the Board and Board staff have been good stewards of public funds and there are no budgetary constraints.

The Committee asked that if appropriate, Ms. Martin add the fact that Board staff saved and put away money to execute the office move.

**Issue #8 License portability for military personnel and their spouses.**

Ms. Martin stated that Board staff will be able to address and display compliance with any new requirements since the 2016 response and show compliance with the current Business and Professions Code sections. The last paragraph of Issue #8 on page 7 asks Board staff to identify the number of people that have asked for a renewal fee waiver. Ms. Martin stated that the numbers were 0-2 renewal fee waivers per year.

**Issue #9 Defining Occupational Therapy.**

Ms. Martin recalled that there was a bill that passed after the last Sunset report that amended the definition of Occupational Therapy and required licensure of faculty. Ms. Martin stated that Board staff will be able to use that as a Sunset report response unless the Committee and Board decide that they wish to make further amendments.

The Committee decided to put this issue on hold until a time that the definition of occupational therapy is agreed upon by the Committee and Board.

**Issue #10 Are the minimum education requirements equal to the advanced practice requirements.**

Ms. Martin stated that she believed the Board should revisit this topic after determining if ACOTE guidelines sufficiently addressed this topic for a partial or complete removal.

A discussion ensued about the inconsistencies between schools and the curriculum they offer and the results of the study that showed schools did not have faith that their students were prepared to deliver Advanced Practices after finishing their program.

The Committee agreed to develop a Practice Committee that includes practitioners with Advanced Practice approval as well as Educators who can weigh in on what curriculum should be offered and how many hours should be required.

The Committee directed Ms. Martin to reach out to Chuck Wilmarth for any changes to the ACOTE guidelines regarding content relating to advanced practice areas and any other information he thinks helpful.

**Public Comment**

OTAC President Bryant Edwards commented that taking another look at the changes that have been made to curriculum would be his recommendation. He wanted to ensure that the Board is not being overly constraining if the curriculum is meeting education guidelines.

Sharon Pavlovich reported to Mr. Bryant that the concern of the Board was born from the study that included what the schools were doing to prepare their students for Advanced Practice and the results showed glaring inconsistencies in the curriculum and amount of instruction required.

Mr. Edwards asked if the survey was available.

Ms. Martin reported that there were two surveys done by Donna Breger Stanton's group. Ms. Martin offered to email the surveys to Mr. Edwards.

Lisa Test commented that she was in favor of the Committee exploring an Ethics course requirement and that it has been her experience that the investigation of complaints is a process that takes too long and she is reticent to file additional complaints. Ms. Test was concerned with the timeliness of solving complaints and hopes it is addressed during the Sunset report.

Ms. Pavlovich assured Ms. Test that her concerns would be reviewed.

Mr. Bookwalter advocated against Ms. Test's reticence to file complaints to the Board because regardless of due process and how long it takes, it is every therapist's duty to report alleged wrongdoing. He encouraged Ms. Test to continue reporting her concerns to the Board since the Board only knows what is brought before it.

Ms. Martin asked that Ms. Test not allow disappointing complaint resolution timeframes to dissuade her from submitting complaints.



Ms. Martin reminded all in attendance that the OT Practice Act requires licensees to report violations to the Board and cooperate in any investigation. Ms. Martin further explained the complaint investigation timeline, use of an expert witness and additional steps involved when dealing with a patient care or fraud case.

Ms. Test thanked the Committee for the opportunity to participate and responded that she was familiar with the reporting process.

Discussion of the next meeting date and time ensued. Beata Morcos asked that the next meeting begin at 3:00 p.m. or 3:30 p.m.

Ms. Pavlovich agreed.

Ms. Pavlovich thanked everybody in attendance for their time.

The meeting adjourned at 5:58 p.m.

# 2021 Questions (emailed 9/13)

## BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM As of [date]

### Section 1 –

#### Background and Description of the Board and Regulated Profession

Provide a short explanation of the history and function of the board.<sup>1</sup> Describe the occupations/profession that are licensed and/or regulated by the board (Practice Acts vs. Title Acts).

1. Describe the make-up and functions of each of the board's committees (cf., Section 12, Attachment B).

Table 1a. Attendance			
[Enter board member name]			
Date Appointed:	[Enter date appointed]		
Meeting Type	Meeting Date	Meeting Location	Attended?
Meeting 1	[Enter Date]	[Enter Location]	[Y/N]
Meeting 2	[Enter Date]	[Enter Location]	[Y/N]
Meeting 3	[Enter Date]	[Enter Location]	[Y/N]
Meeting 4	[Enter Date]	[Enter Location]	[Y/N]

Table 1b. Board/Committee Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Type (public or professional)

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?
3. Describe any major changes to the board since the last Sunset Review, including, but not limited to:
  - Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)

<sup>1</sup> The term "board" in this document refers to a board, bureau, commission, committee, department, division, program, or agency, as applicable. Please change the term "board" throughout this document to appropriately refer to the entity being reviewed.

- All legislation sponsored by the board and affecting the board since the last sunset review.
  - All regulation changes approved by the board since the last sunset review. Include the status of each regulatory change approved by the board.
4. Describe any major studies conducted by the board (cf. Section 12, Attachment C).
  5. List the status of all national associations to which the board belongs.
    - Does the board’s membership include voting privileges?
    - List committees, workshops, working groups, task forces, etc., on which the board participates.
    - How many meetings did board representative(s) attend? When and where?
    - If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

**Section 2 – Performance Measures and Customer Satisfaction Surveys**

6. Provide each quarterly and annual performance measure report for the board as published on the DCA website
7. Provide results for each question in the board’s customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

**Section 3 – Fiscal and Staff**

**Fiscal Issues**

8. Is the board’s fund continuously appropriated? If yes, please cite the statute outlining this continuous appropriation.
9. Describe the board’s current reserve level, spending, and if a statutory reserve level exists.
10. Describe if/when a deficit is projected to occur and if/when a fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.

<b>Table 2. Fund Condition</b>						
(Dollars in Thousands)	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23
Beginning Balance						
Revenues and Transfers						
<b>Total Revenue</b>	\$	\$	\$	\$	\$	\$
Budget Authority						
Expenditures						
Loans to General Fund						
Accrued Interest, Loans to General Fund						
Loans Repaid From General Fund						
<b>Fund Balance</b>	\$	\$	\$	\$	\$	\$

<b>Months in Reserve</b>						
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- Describe the history of general fund loans. When were the loans made? When have payments been made to the board? Has interest been paid? What is the remaining balance?
- Describe the amounts and percentages of expenditures by program component. Use *Table 3. Expenditures by Program Component* to provide a breakdown of the expenditures by the board in each program area. Expenditures by each component (except for pro rata) should be broken out by personnel expenditures and other expenditures.

<b>Table 3. Expenditures by Program Component</b>								(list dollars in thousands)	
	FY 2017/18		FY 2018/19		FY 2019/20		FY 2020/21		
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	
Enforcement									
Examination									
Licensing									
Administration *									
DCA Pro Rata									
Diversion (if applicable)									
<b>TOTALS</b>	\$	\$	\$	\$	\$	\$	\$	\$	

\*Administration includes costs for executive staff, board, administrative support, and fiscal services.

- Describe the amount the board has contributed to the BreEZe program. What are the anticipated BreEZe costs the board has received from DCA?
- Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the board.

<b>Table 4. Fee Schedule and Revenue</b>								(list revenue dollars in thousands)
Fee	Current Fee Amount	Statutory Limit	FY 2017/18 Revenue	FY 2018/19 Revenue	FY 2019/20 Revenue	FY 2020/21 Revenue	% of Total Revenue	

15. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Description of Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested (include classification)	# Staff Approved (include classification)	\$ Requested	\$ Approved	\$ Requested	\$ Approved

### Staffing Issues

16. Describe any board staffing issues/challenges, i.e., vacancy rates, efforts to reclassify positions, staff turnover, recruitment and retention efforts, succession planning.
17. Describe the board’s staff development efforts and total spent annually on staff development (cf., Section 12, Attachment D).

## Section 4 – Licensing Program

18. What are the board’s performance targets/expectations for its licensing<sup>2</sup> program? Is the board meeting those expectations? If not, what is the board doing to improve performance?
19. Describe any increase or decrease in the board’s average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done by the board to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?
20. How many licenses or registrations has the board denied over the past four years based on criminal history that is determined to be substantially related to the qualifications, functions, or duties of the profession, pursuant to BPC § 480? Please provide a breakdown of each instance of denial and the acts the board determined were substantially related.

<sup>2</sup> The term “license” in this document includes a license certificate or registration.

**Table 6. Licensee Population**

		FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
[Enter License Type]	Active <sup>3</sup>				
	Out of State				
	Out of Country				
	Delinquent/Expired				
	Retired Status <i>if applicable</i>				
	Inactive				
	Other <sup>4</sup>				
[Enter License Type]	Active				
	Out of State				
	Out of Country				
	Delinquent/Expired				
	Retired Status <i>if applicable</i>				
	Inactive				
	Other				
[Enter License Type]	Active				
	Out of State				
	Out of Country				
	Delinquent/Expired				
	Retired Status <i>if applicable</i>				
	Inactive				
	Other				
[Enter License Type]	Active				
	Out of State				
	Out of Country				
	Delinquent/Expired				
	Retired Status <i>if applicable</i>				
	Inactive				
	Other				

Note: 'Out of State' and 'Out of Country' are two mutually exclusive categories. A licensee should not be counted in both.

<sup>3</sup> Active status is defined as able to practice. This includes licensees that are renewed, current, and active.

<sup>4</sup> Other is defined as a status type that does not allow practice in California, other than retired or inactive.

Table 7a. Licensing Data by Type										
Application Type		Received	Approved/Issued	Closed	Pending Applications			Cycle Times		
					Total (Close of FY)	Complete (within Board control)*	Incomplete (outside Board control)*	Complete Apps	Incomplete Apps	combined, IF unable to separate out
FY 2018/19	(Exam)				-	-	-	-	-	-
	(License)				-	-	-	-	-	-
	(Renewal)			n/a	-	-	-	-	-	-
FY 2019/20	(Exam)									
	(License)									
	(Renewal)			n/a						
FY 2020/21	(Exam)									
	(License)									
	(Renewal)			n/a						

\* Optional. List if tracked by the board.

Table 7b. License Denial			
	FY 2018/19	FY 2019/20	FY 2020/21
License Applications Denied (no hearing requested)			
SOIs Filed			
Average Days to File SOI (from request for hearing to SOI filed)			
SOIs Declined			
SOIs Withdrawn			
SOIs Dismissed (license granted)			
License Issued with Probation / Probationary License Issued			
Average Days to Complete (from SOI filing to outcome)			

21. How does the board verify information provided by the applicant?

- a. What process does the board use to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant? Has the board denied any licenses over the last four years based on the applicant's failure to disclose information on the application, including failure to self-disclose criminal history? If so, how many times and for what types of crimes (please be specific)?
- b. Does the board fingerprint all applicants?
- c. Have all current licensees been fingerprinted? If not, explain.
- d. Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?
- e. Does the board require primary source documentation?

22. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

23. Describe the board's process, if any, for considering military education, training, and experience for purposes of licensing or credentialing requirements, including college credit equivalency.

- a. Does the board identify or track applicants who are veterans? If not, when does the board expect to be compliant with BPC § 114.5?
  - b. How many applicants offered military education, training or experience towards meeting licensing or credentialing requirements, and how many applicants had such education, training or experience accepted by the board?
  - c. What regulatory changes has the board made to bring it into conformance with BPC § 35?
  - d. How many licensees has the board waived fees or requirements for pursuant to BPC § 114.3, and what has the impact been on board revenues?
  - e. How many applications has the board expedited pursuant to BPC § 115.5?
24. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

**Examinations**

<b>Table 8. Examination Data<sup>5</sup></b>			
<b>California Examination (include multiple language) if any:</b>			
	License Type		
	Exam Title		
	Number of Candidates		
FY 2017/18	Overall Pass %		
	Overall Fail %		
FY 2018/19	Overall Pass %		
	Overall Fail %		
FY 2019/20	Overall Pass %		
	Overall Fail %		
FY 2020/21	Overall Pass %		
	Overall Fail %		
	Date of Last OA		
	Name of OA Developer		
	Target OA Date		

<sup>5</sup> This table includes all exams for all license types as well as the pass/fail rate. Include as many examination types as necessary to cover all exams for all license types.



National Examination (include multiple language) if any:			
License Type			
Exam Title			
Number of Candidates			
FY 2017/18	Overall Pass %		
	Overall Fail %		
FY 2018/19	Overall Pass %		
	Overall Fail %		
FY 2019/20	Overall Pass %		
	Overall Fail %		
FY 2020/21	Overall Pass %		
	Overall Fail %		
Date of Last OA			
Name of OA Developer			
Target OA Date			

25. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required? Are examinations offered in a language other than English?
26. What are pass rates for first time vs. retakes in the past 4 fiscal years? (*Refer to Table 8: Examination Data*) Are pass rates collected for examinations offered in a language other than English?
27. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?
28. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

### School approvals

29. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?
30. How many schools are approved by the board? How often are approved schools reviewed? Can the board remove its approval of a school?
31. What are the board's legal requirements regarding approval of international schools?

### Continuing Education/Competency Requirements

32. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.
  - a. How does the board verify CE or other competency requirements? Has the Board worked with the Department to receive primary source verification of CE completion through the Department's cloud?
  - b. Does the board conduct CE audits of licensees? Describe the board's policy on CE audits.
  - c. What are consequences for failing a CE audit?

- d. How many CE audits were conducted in the past four fiscal years? How many fails? What is the percentage of CE failure?
- e. What is the board's CE course approval policy?
- f. Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?
- g. How many applications for CE providers and CE courses were received? How many were approved?
- h. Does the board audit CE providers? If so, describe the board's policy and process.
- i. Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensee's continuing competence.

<b>Table 8a. Continuing Education</b>			
Type	Frequency of Renewal	Number of CE Hours Required Each Cycle	Percentage of Licensees Audited

**Section 5 – Enforcement Program**

- 33. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?
- 34. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

<b>Table 9a. Enforcement Statistics</b>			
	FY 2018/19	FY 2019/20	FY 2020/21
<b>COMPLAINTS</b>			
Intake			
Received			
Closed without Referral for Investigation			
Referred to INV			
Pending (close of FY)			
Conviction / Arrest			
CONV Received			
CONV Closed Without Referral for Investigation			
CONV Referred to INV			
CONV Pending (close of FY)			
Source of Complaint <sup>6</sup>			
Public			
Licensee/Professional Groups			
Governmental Agencies			
Internal			
Other			
Anonymous			
Average Time to Refer for Investigation (from receipt of complaint / conviction to referral for investigation)			
Average Time to Closure (from receipt of complaint / conviction to closure at intake)			
Average Time at Intake (from receipt of complaint / conviction to closure for referral for investigation)			
<b>INVESTIGATION</b>			
Desk Investigations			
Opened			
Closed			
Average days to close (from assignment to investigation closure)			
Pending (close of FY)			
Non-Sworn Investigation			
Opened			
Closed			
Average days to close (from assignment to investigation closure)			
Pending (close of FY)			
Sworn Investigation			
Opened			
Closed			
Average days to close (from assignment to investigation closure)			
Pending (close of FY)			
All investigations <sup>7</sup>			

<sup>6</sup> Source of complaint refers to complaints and convictions received. The summation of intake and convictions should match the total of source of complaint.

<sup>7</sup> The summation of desk, non-sworn, and sworn investigations should match the total of all investigations.

Opened			
Closed			
Average days for all investigation outcomes (from start investigation to investigation closure or referral for prosecution)			
Average days for investigation closures (from start investigation to investigation closure)			
Average days for investigation when referring for prosecution (from start investigation to referral prosecution)			
Average days from receipt of complaint to investigation closure			
Pending (close of FY)			
<b>CITATION AND FINE</b>			
Citations Issued			
Average Days to Complete (from complaint receipt / inspection conducted to citation issued)			
Amount of Fines Assessed			
Amount of Fines Reduced, Withdrawn, Dismissed			
Amount Collected			
<b>CRIMINAL ACTION</b>			
Referred for Criminal Prosecution			
<b>ACCUSATION</b>			
Accusations Filed			
Accusations Declined			
Accusations Withdrawn			
Accusations Dismissed			
Average Days from Referral to Accusations Filed (from AG referral to Accusation filed)			
<b>INTERIM ACTION</b>			
ISO & TRO Issued			
PC 23 Orders Issued			
Other Suspension/Restriction Orders Issued			
Referred for Diversion			
Petition to Compel Examination Ordered			
<b>DISCIPLINE</b>			
AG Cases Initiated (cases referred to the AG in that year)			
AG Cases Pending Pre-Accusation (close of FY)			
AG Cases Pending Post-Accusation (close of FY)			
<b>DISCIPLINARY OUTCOMES</b>			
Revocation			
Surrender			
Suspension only			
Probation with Suspension			
Probation only			
Public Reprimand / Public Reproval / Public Letter of Reprimand			
Other			
<b>DISCIPLINARY ACTIONS</b>			
Proposed Decision			
Default Decision			
Stipulations			
Average Days to Complete After Accusation (from Accusation filed to closure of the case)			

Average Days from Closure of Investigation to Imposing Formal Discipline			
Average Days to Impose Discipline (from complaint receipt to final outcome)			
<b>PROBATION</b>			
Probations Completed			
Probationers Pending (close of FY)			
Probationers Tolloed			
Petitions to Revoke Probation / Accusation and Petition to Revoke Probation Filed			
<b>SUBSEQUENT DISCIPLINE<sup>8</sup></b>			
Probations Revoked			
Probationers License Surrendered			
Additional Probation Only			
Suspension Only Added			
Other Conditions Added Only			
Other Probation Outcome			
<b>SUBSTANCE ABUSING LICENSEES</b>			
Probationers Subject to Drug Testing			
Drug Tests Ordered			
Positive Drug Tests			
<b>PETITIONS</b>			
Petition for Termination or Modification Granted			
Petition for Termination or Modification Denied			
Petition for Reinstatement Granted			
Petition for Reinstatement Denied			
<b>DIVERSION</b>			
New Participants			
Successful Completions			
Participants (close of FY)			
Terminations			
Terminations for Public Threat			
Drug Tests Ordered			
Positive Drug Tests			

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<sup>8</sup> Do not include these numbers in the Disciplinary Actions section above.

<b>Table 10. Enforcement Aging</b>						
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	Cases Closed	Average %
<b>Investigations (Average %)</b>						
Closed Within:						
90 Days						
91 - 180 Days						
181 - 1 Year						
1 - 2 Years						
2 - 3 Years						
Over 3 Years						
Total Investigation Cases Closed						
<b>Attorney General Cases (Average %)</b>						
Closed Within:						
0 - 1 Year						
1 - 2 Years						
2 - 3 Years						
3 - 4 Years						
Over 4 Years						
Total Attorney General Cases Closed						

35. What do overall statistics show as to increases or decreases in disciplinary action since last review?
36. How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's *Complaint Prioritization Guidelines for Health Care Agencies* (August 31, 2009)? If so, explain why.
37. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the board actions taken against a licensee. Are there problems with the board receiving the required reports? If so, what could be done to correct the problems?
- What is the dollar threshold for settlement reports received by the board?
  - What is the average dollar amount of settlements reported to the board?
38. Describe settlements the board, and Office of the Attorney General on behalf of the board, enter into with licensees.
- What is the number of cases, pre-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?
  - What is the number of cases, post-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?
  - What is the overall percentage of cases for the past four years that have been settled rather than resulted in a hearing?
39. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the board's policy on statute of limitations?
40. Describe the board's efforts to address unlicensed activity and the underground economy.

## Cite and Fine

41. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the board increased its maximum fines to the \$5,000 statutory limit?
42. How is cite and fine used? What types of violations are the basis for citation and fine?
43. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?
44. What are the five most common violations for which citations are issued?
45. What is average fine pre- and post- appeal?
46. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

## Cost Recovery and Restitution

47. Describe the board's efforts to obtain cost recovery. Discuss any changes from the last review.
48. How many and how much is ordered by the board for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.
49. Are there cases for which the board does not seek cost recovery? Why?
50. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.
51. Describe the board's efforts to obtain restitution for individual consumers, any formal or informal board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.

<b>Table 11. Cost Recovery<sup>9</sup></b>				
(list dollars in thousands)				
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Total Enforcement Expenditures				
Potential Cases for Recovery *				
Cases Recovery Ordered				
Amount of Cost Recovery Ordered				
Amount Collected				
* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.				

<b>Table 12. Restitution</b>				
(list dollars in thousands)				
	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Amount Ordered				
Amount Collected				

<sup>9</sup> Cost recovery may include information from prior fiscal years.

## Section 6 – Public Information Policies

52. How does the board use the internet to keep the public informed of board activities? Does the board post board-meeting materials online? When are they posted? How long do they remain on the board's website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?
53. Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings? How long do webcast meetings remain available online?
54. Does the board establish an annual meeting calendar, and post it on the board's web site?
55. Is the board's complaint disclosure policy consistent with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the board post accusations and disciplinary actions consistent with DCA's *Web Site Posting of Accusations and Disciplinary Actions* (May 21, 2010)?
56. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?
57. What methods are used by the board to provide consumer outreach and education?

## Section 7 – Online Practice Issues

58. Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate internet business practices or believe there is a need to do so?

## Section 8 – Workforce Development and Job Creation

59. What actions has the board taken in terms of workforce development?
60. Describe any assessment the board has conducted on the impact of licensing delays.
61. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.
62. Describe any barriers to licensure and/or employment the board believes exist.
63. Provide any workforce development data collected by the board, such as:
  - a. Workforce shortages
  - b. Successful training programs.



## Section 9 – Current Issues

64. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?
65. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?
66. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.
- Is the board utilizing BreEZe? What Release was the board included in? What is the status of the board's change requests?
  - If the board is not utilizing BreEZe, what is the board's plan for future IT needs? What discussions has the board had with DCA about IT needs and options? What is the board's understanding of Release 3 boards? Is the board currently using a bridge or workaround system?

## Section 10 – Board Actions and Responses to COVID-19.

67. In response to COVID-19, has the board implemented teleworking policies for employees and staff?
- How have those measures affected board operations? If so, how?
68. In response to COVID-19, has the board utilized any existing state of emergency statutes?
- If so, which ones, and why?
69. Pursuant to the Governor's Executive Orders N-40-20 and N-75-20, has the board worked on any waiver requests with the Department?
- Of the above requests, how many were approved?
  - How many are pending?
  - How many were denied?
  - What was the reason for the outcome of each request?
70. In response to COVID-19, has the board taken any other steps or implemented any other policies regarding licensees or consumers?
71. Has the board recognized any necessary statutory revisions, updates or changes to address COVID-19 or any future State of Emergency Declarations?

## Section 11 – Board Action and Response to Prior Sunset Issues

Include the following:

- Background information concerning the issue as it pertains to the board.
- 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.

## Section 12 – New Issues

This is the opportunity for the board to inform the Committees of solutions to issues identified by the board and by the Committees. Provide a short discussion of each of the outstanding issues, and the board's recommendation for action that could be taken by the board, by DCA or by the Legislature to resolve these issues (i.e., policy direction, budget changes, legislative changes) for each of the following:

1. Issues raised under prior Sunset Review that have not been addressed.
2. New issues identified by the board in this report.
3. New issues not previously discussed in this report.
4. New issues raised by the Committees.

## Section 13– Attachments

Please provide the following attachments:

- A. Board's administrative manual.
- B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).
- C. Major studies, if any (cf., Section 1, Question 4).
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).

# **BACKGROUND PAPER FOR THE CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**

**Joint Sunset Review Oversight Hearing, March 10, 2022  
Senate Committee on Business, Professions and Economic Development  
and the Assembly Committee on Business and Professions**

## **BACKGROUND, IDENTIFIED ISSUES, AND RECOMMENDATIONS**

### **OVERVIEW OF THE BOARD**

The California Board of Occupational Therapy (CBOT) is a licensing entity within the Department of Consumer Affairs (DCA). CBOT is responsible for administering and enforcing the Occupational Therapy Practice Act.<sup>1</sup> The act contains the laws that establish CBOT and outline the licensure program, a regulatory framework for the practice, licensing, education, and discipline of licensed occupational therapists (OTs) and licensed occupational therapy assistants (OTAs). CBOT also regulates unlicensed occupational therapy aides that provide support services to OTs and OTAs.

Occupational therapy is the use of goal-directed activities (occupations) to support client participation, performance, and function at home, school, the workplace, and in other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness for clients with disability- and non-disability-related needs or to those who have, or are at risk of developing, health conditions that limit activity or cause participation restrictions. Common situations include helping children with disabilities to participate fully in school and develop social skills, helping people recovering from injury to regain function through retraining or adaptations, and providing support for older adults experiencing physical and cognitive changes.

At the end of the 2020-21 Fiscal Year (FY), CBOT reported a total of 18,862 active licensees, including 15,135 OTs and 3,727 OTAs.

CBOT's mission is:<sup>2</sup>

To protect California consumers of occupational therapy services through effective regulation, licensing, and enforcement.

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<sup>1</sup> BPC §§ 2570-2571.

<sup>2</sup> *CBOT Strategic Plan 2020-2024*, at 5.

## **Scope of Practice**

OT services include assessment, treatment, education, and consultation. Specific techniques involve teaching activities of daily living (excluding speech-language skills), designing or fabricating orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training).

In addition to providing the services above, OTs with additional training may seek CBOT approval to perform specified advanced practices. These include hand therapy; physical agent modalities; use of topical medications; and swallowing assessment, evaluation, or intervention.

OTs also supervise OTAs and unlicensed aids. OTAs may provide any services that a supervising OT deems appropriate given the patient/client and the OTA's competence, except that the supervising OT cannot delegate the following:

- Interpretation of referrals or prescriptions for occupational therapy services.
- Interpretation and analysis for evaluation purposes.
- Development, interpretation, implementation, and modifications of the treatment plan and the discharge plan.

While OTAs may practice without the supervising OT physically present, the supervising OT is ultimately responsible for any care provided and must perform weekly reviews, document the supervision, be readily available for consultation, and periodically perform onsite reviews. OTAs may also supervise certain students and aids.

Unlicensed aides may perform routine tasks related to occupational therapy services. Non-client-related tasks include clerical, secretarial, and administrative activities; transportation of patients or clients; preparation or maintenance of treatment equipment and work area; taking care of patient or client personal needs during treatments; and assisting in the construction of adaptive equipment and splints.

Aides may also perform limited client-related tasks. The tasks must be routine and predictable and require no decision-making by the aide.

## **Legislative History**

The regulation of OTs and OTAs in California began in 1977 when the state first enacted a title protection law.<sup>3</sup> The law required any person representing themselves as an OT or OTA to meet the qualification established by the state health department that governed reimbursement for occupational therapy services at the time and made it a misdemeanor to use titles or representations associated with OTs and

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<sup>3</sup> Assembly Bill (AB) 1100 (Egeland et al.), Chapter 836, Statutes of 1977.

OTAs. It also prohibited health facilities from advertising that they offered occupational therapy services unless the services were provided by an OT or OTA that met the requirements under the law.

In 1993, the law was updated to specify additional training requirements for those using the title of OT or OTA.<sup>4</sup> The amended law required, in addition to the existing requirements, that OTs be a graduate of an accredited occupational therapy training program and either 1) be certified or eligible for verification by the national certification board, then named the American Occupational Certification Board, or 2) have at least two years of occupational therapy experience and pass the examination approved by the U.S. Department of Health and Human Services. It also required that OTAs be additionally certified or eligible for certification by the national certification board.

In 2000, the law was replaced by the Occupational Therapy Act, establishing the CBOT and the licensing requirements that exist today.<sup>5</sup> The act includes a scope of practice, which prohibits the unlicensed practice of occupational therapy regardless of the use of titles and specifies the legal extent of what services an OT or OTA may provide. The next substantial update to the act occurred in 2018 when a bill was passed to modernize various provisions of the act, including definitions, scope of practice, and the use of doctoral titles.<sup>6</sup>

## **Board Membership**

The Occupational Therapy Act specifies that CBOT is composed of seven members, three public members, and four professional members, a professional member majority. The Governor appoints all of the professional members and one of the public members, while the Senate Rules Committee and the Speaker of the Assembly appoint the remaining two public members. Board members serve four-year terms, but may not serve more than two consecutive terms. Board members with expired terms may serve for an additional one year or until a successor is appointed.<sup>7</sup>

There are no qualifications for the appointment of public members, except that they may not be licensees of CBOT or any other healing arts board, nor may they be related to, live with, or, within two years before the appointment, have a financial interest in a CBOT licensee. The professional members must include three OTs who have been engaged in occupational therapy practice, education, or research in the last five years, although no more than one may be a full-time faculty in education.

CBOT is required to meet at least three times per year, once each in the cities of Sacramento, Los Angeles, and San Francisco. Meetings are public, pursuant to the Bagley-Keene Open Meetings Act.<sup>8</sup> Members are not paid but receive a per diem of \$100 for each day spent in the discharge of official duties

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<sup>4</sup> AB 1852 (Murray), Chapter 361, Statutes of 1993.

<sup>5</sup> Senate Bill (SB) 1046 (Murray), Chapter 697, Statutes of 2000.

<sup>6</sup> AB 2221 (Bloom), Chapter 490, Statutes of 2018.

<sup>7</sup> BPC § 105.5.

<sup>8</sup> Government Code §§ 11120-11132.

and are reimbursed for traveling and other expenses necessarily incurred in the performance of official duties.

The current CBOT members and their backgrounds are listed as follows.

<b>Board Members</b>	<b>Initial Appointment</b>	<b>Last Appointment</b>	<b>Term Expiration</b>	<b>Appointing Authority</b>
<b>Sharon Pavlovich, President, OTA Member,</b> has been an Assistant Professor at Loma Linda University since 2004. She is a member of the American Occupational Therapy Association, National Board for Certification in Occupational Therapy, and Occupational Therapy Association of California.	08/16/13	01/21/21	12/31/23	Governor
<b>Beata Draga-Morcros, Secretary, Public Member,</b> has been chief executive officer at the Black American Political Association of California since 2008. She was director of operations at Worldtone Dance from 2005 to 2008.	05/19/15	01/04/19	12/31/22	Governor
<b>Denise Miller, OT Member,</b> has been self-employed as a Healthcare Consultant, Project Manager, and Technical Writer since 2019 and an Adjunct Professor at Stanbridge University since 2018. She was Director of Aging Services and Product Development at AltaMed Health Services from 2018 to 2019. She served in various positions at Adventist Health Glendale from 2010 to 2017. Miller is a member of Glendale Sunrise Rotary and the Glendale Police Foundation and a fellow of the American Occupational Therapy Association. She earned a Master of Business Administration degree from La Sierra University	05/15/13	01/22/21	12/31/23	Governor
<b>Lynna Lan Tien Do, Public Member,</b> serves as an At-Large Director for the Association of Junior Leagues International Board of Directors, as well as a member of the International Governing Board for Delta Phi Epsilon International Sorority. She was previously a member of the Alameda County Mental Health Board, City of Dublin Planning Commission, City of Fremont Community Block Grant Commission, and City of Pinole Youth Commission. She has worked for several elected officials, including Senator Dianne Feinstein, Mayor Willie L. Brown, Jr., City and County of San Francisco Supervisor Leland Yee, and Santa Clara County Supervisor Liz Kniss, as well as the Gavin Newsom for Mayor of San Francisco Campaign. She holds degrees from the University of San Francisco, Bachelor of Arts in Politics, and a minor in Business and a Master's in Public Administration. She has her Master of Philosophy in Research and is working on finishing her Ph.D. in Psychology from Walden University.	07/25/20	05/19/21	12/31/24	Senate

<b>Board Members</b>	<b>Initial Appointment</b>	<b>Last Appointment</b>	<b>Term Expiration</b>	<b>Appointing Authority</b>
<b>Richard Bookwalter, OT Member</b> , has been an occupational therapist for durable medical equipment and rehabilitation outcomes for Kaiser Foundation Hospitals Inc. since 2008. He was supervisor of outpatient rehabilitation at the California Pacific Medical Center from 2006 to 2008, occupational therapist and program manager at the Institute on Aging from 1996 to 2006, and a home health occupational therapist at the University of California, San Francisco Medical Center Home Health Care from 1998 to 1999. Bookwalter was an occupational therapist at the Davies Medical Center from 1995 to 1997, a development associate at the Manpower Demonstration Research Corporation from 1988 to 1993, and a manager in development communications at the Columbia University Teachers College from 1986 to 1987. Bookwalter earned a Master of Science degree in occupational therapy from San Jose State University.	03/05/14	05/04/21	12/31/24	Governor
<b>Vacancy, OT Member</b>	Vacant as of January 1, 2019			Governor
<b>Vacancy, Public member</b>	Vacant as of February 15, 2022			Assembly

## Committees

According to CBOT, it has four committees to assist the full board address specific policy or administrative issues:

- **Administrative Committee:** the purpose of the Administrative Committee is to annually update the Strategic Plan, respond to items identified in an internal audit and provide guidance to staff in the fulfillment of the audit staff's recommendations, guide staff for the budgeting and organizational components of the board (i.e., sunset review, sunrise projects, budget change proposals, out-of-state trip requests, contracts, meeting agendas and preparations) and other duties as required.
- **Education and Outreach Committee:** the purpose of the Education and Outreach Committee is to develop consumer and licensee outreach projects, including the board's newsletter, website, e-government initiatives, and outside organization presentations. Committee members may be asked to represent the board at meetings, conferences, health, career, or job fairs, or at the invitation of outside organizations and programs.
- **Legislative and Regulatory Affairs Committee:** The purpose of the Legislative and Regulatory Affairs Committee is to provide information or make recommendations to the board and its committees on matters relating to legislation and regulations.
- **Practice Committee:** The purpose of the Practice Committee is to review and provide recommended responses to the board on various practice issues submitted by licensees and consumers, guide staff on continuing competency audits, review and provide recommendations to the board on practice-

related proposed regulatory amendments, and review and provide recommendations to board staff on revisions to various applications and forms used by the board.

## **Staffing**

CBOT reports 6.5 vacant positions of is 17.7 authorized staff positions (36.7%). CBOT reports that this is the result of several retirements and that its succession planning was hindered due to the COVID-19 pandemic, vacancies, and other priorities. It is planning to hire a retired annuitant to assist with re-classifying positions and recruitment efforts to fill vacancies. Staff vacancies are discussed further on page 17 under Issue #2: Staff Vacancies.

## **Fiscal**

CBOT is a special fund agency and receives no support from the General Fund.<sup>9</sup> As a result, CBOT must rely on its revenue to support its operations. The CBOT cannot spend more than its budget authority, which is appropriated annually in the Budget Act.

CBOT's fund, the Occupational Therapy Fund,<sup>10</sup> is primarily funded through administrative and licensing fee revenues. It may also collect revenue from fines and enforcement cost recovery, however, these are not relied on as a primary source of revenue because they tend to be low and volatile.

The largest and most consistent source of revenue is renewal fees. CBOT sets license and renewal fees in regulations within its statutory authority. The CBOT's statutory license and renewal fee limit is \$150 per year and has not increased since the board was established in 2000. CBOT currently assesses fees on a biennial basis and is close to the \$300 limit. As of January 1, 2021, the initial license fee (prorated based on issuance date) and biennial renewal fees are \$270 for OTs and \$210 for OTAs.

Revenues that are not used by the end of the FY are used as a fund reserve, which is a fund balance that can cover economic uncertainties, potential litigation, salary or price increases, and other unexpected expenditures that may exceed revenue in any given FY.<sup>11</sup> Reserves are calculated using the number of months a board can maintain solvency without revenue.

CBOT and other licensing boards aim to maintain a healthy reserve, often between 3-6 months. When reserves are too high or too low, boards seek to correct any structural imbalances in their budgets, which may include fee adjustments. Boards with reserves that exceed 24 months of their operating budget are statutorily required to reduce their fees.<sup>12</sup>

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<sup>9</sup> For more information related to state funds, see Department of Finance, *Glossary of Budget Terms*, [http://www.dof.ca.gov/budget/resources\\_for\\_departments/budget\\_analyst\\_guide/glossary.pdf](http://www.dof.ca.gov/budget/resources_for_departments/budget_analyst_guide/glossary.pdf).

<sup>10</sup> BPC § 2570.22.

<sup>11</sup> GOV § 16418.5.

<sup>12</sup> BPC § 128.5.



Before 2007, CBOT’s reserve had exceeded 39 months. As a result, CBOT switched its license renewal from \$150 annually to \$150 biennially, halving its fee revenue. As a result, CBOT has operated with a budget deficit since FY 2009-10. While CBOT continues to use a biennial renewal cycle, it has periodically increased its fees, most recently approving the increase to the current fees as of January 1, 2021.

However, CBOT continues to operate at a deficit, with expenditures continuing to exceed its revenue by an average of \$370,500 per FY (2.4 months of reserve). The CBOT’s current year fund reserve is approximately \$1.85 million (5.2 months). Although CBOT consistently spends less than its budget authority every year, its fund may become insolvent as early as FY 2023-24.

The CBOT’s fund condition is discussed further on page 16 under Current Sunset Review Issues, Issue #1: Fund Condition.

<b>Fund Condition (Dollars in Thousands)</b>									
	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>	<b>FY 2023-24</b>
<b>Beginning Balance*</b>	\$ 2,982	\$ 3,029	\$ 2,588	\$ 2,319	\$ 2,097	\$ 1,850	\$ 1,550	\$ 1,035	\$ 392
Total revenues	\$ 1,305	\$ 1,416	\$ 1,800	\$ 2,255	\$ 2,294	\$ 2,481	\$ 3,099	\$ 3,070	\$ 3,065
Total resources	\$ 4,287	\$ 4,445	\$ 4,388	\$ 4,574	\$ 4,391	\$ 4,331	\$ 4,649	\$ 4,105	\$ 3,458
<b>Expenditures</b>	\$ 1,285	\$ 1,857	\$ 2,270	\$ 2,371	\$ 2,541	\$ 2,760	**\$3,514	**\$3,614	**\$3,716
<b>Fund Balance</b>	\$3,002	\$2,588	\$2,118	\$2,203	\$1,850	\$1,571	\$1,135	\$491	(\$258)
<b>Months in Reserve</b>	19.4	13.7	10.7	10.9	8.0	5.2	3.4	1.3	-1.0

\* May not match prior fund balance due to prior year adjustments.  
 \*\* Based on current/anticipated budget authority and not necessarily reflective of the actual amount that will be expended. CBOT has consistently expended less than its budget authority since FY 2008-09.

CBOT’s expenditures can be broken down based on its administrative, licensing and education, and enforcement costs. All licensing boards also pay a pro rata contribution to the DCA to cover various administrative services provided, including training and planning, legal and legislative affairs, information technology, communications, public affairs, and investigative services, among others.

<b>Expenditures by Program Component (Dollars in Thousands)</b>								
	<b>FY 2017-18</b>		<b>FY 2018-19</b>		<b>FY 2019-20</b>		<b>FY 2020-21</b>	
Enforcement	40%	\$844	42%	\$896	42%	\$962	36%	\$944
Licensing	17%	\$369	17%	\$355	17%	\$398	19%	\$501
Administration	17%	\$370	17%	\$360	17%	\$389	13%	\$389
DCA Pro Rata	25%	\$539	25%	\$593	24%	\$565	31%	\$821
<b>Total Expenditures</b>	\$ 2,122		\$ 2,150		\$ 2,341		\$ 2,620	

\*Administration includes costs for executive staff, board, administrative support, and fiscal services.

## Licensing

In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. To that end, those who wish to practice in a licensed profession must demonstrate a minimum level of competency and fitness to practice. Although occupational therapy requires a license, OT and OTA licensees may delegate certain functions to unlicensed aids.

Applicants applying to CBOT for an OT or OTA license demonstrate competence and fitness by meeting the following requirements:

- Be at least 18 years of age.
- Complete a background check and have committed no acts or crimes constituting grounds for denial of a license, including any other licenses the applicant may hold.<sup>13</sup>
- Complete the certification examination offered by the National Board for Certification in Occupational Therapy (NBCOT).
- Submit evidence of qualifying education.
- Pay an initial license fee. The current fee is \$270 for OTs and \$210 for OTAs, which is prorated based on the amount of time between the issuance of the license and the renewal date (the licensee's birth month and year).

At the end of FY 2020-21, CBOT reports 18,862 active licensees, including 15,135 OTs and 3,727 OTAs. In the last five years, between FYs 2016-17 and 2020-21, CBOT issued new licenses to an average of 2,490 OTs and 426 OTAs per FY. It also issued renewals to an average of 6,558 OTs and 1,507 OTAs per FY.

CBOT's performance target for its licensing program is to respond to an application with written approval or deficiency within 30 days of receipt.<sup>14</sup> CBOT reports that it generally meets this timeframe and takes approximately 22-28 days to either respond with approval or whether additional information is required.

Since FY 2016-17, CBOT's average time to fully process an OT application was 28 days for completed applications and 71 days for incomplete applications. For OTAs, the average processing time was 28 days for completed applications and 76 days for incomplete applications. The processing timeframes have slowly increased since the last review, coinciding with an increasing number of applications.

When CBOT is at risk of not meeting its 30-day performance target, it states that it has been able to redirect staff resources. It states this is usually due to short surges in application submissions around

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<sup>13</sup> BPC § 480.

<sup>14</sup> CCR, tit. 16, § 4112

graduation periods. It also reports that so far, growth in pending applications has been manageable. If CBOT is not able to meet the 30-day performance target, it will take steps to improve them, including seeking additional staff through the BCP process or considering legislative or regulatory changes.

## **Education**

Current law requires that educational programs meet specified accreditation requirements and be approved by CBOT. Specifically, it requires that OT and OTA programs are accredited by the American Occupational Therapy Association's (AOTA) Accreditation Council for Occupational Therapy Education (ACOTE), or accredited or approved by AOTA's predecessor organization, or approved by AOTA's Career Mobility Program. The law also provides limited exceptions for those who did not graduate from the programs above.

However, obtaining an OT or OTA license in California requires the passage of an NCBOT examination, and eligibility for the NCBOT examination specifically requires graduation from an ACOTE-accredited program.<sup>15</sup> As a result, CBOT does not need to directly approve OT and OTA educational programs or perform site visits because all applicants must have completed an ACOTE-accredited program to be eligible for the NCBOT examination. As a result, it essentially double-checks that applicant transcripts are from an ACOTE-accredited program.

As to accreditation, ACOTE is an accreditation agency recognized by the U.S. Department of Education. It only offers accreditation for OT doctoral and master's degree programs and OTA bachelor's and associate degree programs. Its accreditation process aims to ensure applicant programs, and approved programs on an ongoing basis, are meeting educational standards that provide students the appropriate level of education and fieldwork training to seek licensure as an OT or OTA.

## **Continuing Education**

Continuing education is the requirement that licensees stay current on new concepts, procedures, and practices relative to their respective scopes of practice. Under the Occupational Therapy Act, the continuing education requirement is called "continuing competence." To meet the continuing competence requirement, CBOT requires both OT and OTA licensees to meet 24 professional development units (PDU) every two years.

CBOT accepts a variety of methods to complete the PDU requirements, ranging from participating in course work, study groups, structured mentoring (of the licensee or a colleague), supervising fieldwork, obtaining academic credit, publication of articles, making presentations, attending CBOT meetings, and attending CBOT outreach meetings. Each method has its own calculation for the number of qualifying PDUs it provides.

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<sup>15</sup> *Certification Eligibility Requirements*, NCBOT, <https://www.nbcot.org/Students/get-certified>.

CBOT verifies PDUs by requiring that licensees certify completion and then randomly auditing a certain percentage of those licensees. Failure to meet the requirements can subject a licensee to disciplinary action.

CBOT aims to audit between 10-15% of the total number of renewals:

- In FY 2017-18, it audited 619 of the 7,564 renewals (8%) and 77 licensees failed (12.43%)
- In FY 2018-19, it audited 743 of the 8,134 renewals (9.1%) and 79 licensees failed (10.63%)
- In FY 2019-20, it audited 1,253 of the 8,427 renewals (14.9%) and 63 licensees failed (5%)
- In FY 2020-21, it audited 225 of 8,745 (2.5%) renewals and 9 licensees failed (4%).

The reason for the low audit rate in FY 2020-21 was that continuing education requirements were waived due to the COVID-19 pandemic. As noted in the waiver documents.

On March 4, 2020, the Governor proclaimed a State of Emergency in California as a result of the impacts of COVID-19 to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the state prepare to respond to an increasing number of individuals requiring medical care and hospitalization as a result of a broader spread of COVID-19.

Pursuant to the Governor's Executive Order N-39-20, during the State of Emergency, the Director of the California Department of Consumer Affairs may waive any statutory or regulatory renewal requirements pertaining to individuals licensed pursuant to Division 2 of the [BPC].

As a result, DCA temporarily waived the following requirements:

- 1) Any statutory or regulatory requirement that individuals renewing a healing arts license take and pass an examination to renew a license.
- 2) Any statutory or regulatory requirement that an individual renewing a healing arts license complete, or demonstrate compliance with, any continuing education requirements to renew a license.

The temporary waivers did not apply to any continuing education, training, or examination required pursuant to a disciplinary order against a license. They also required that licensees satisfy any waived renewal requirements within six months of the waiver unless it is further extended. The waivers were extended or superseded several times:

- 1) **March 31, 2020:** DCA Waiver DCA-20-01 waived requirements for licenses expiring between March 31, 2020, and June 30, 2020.

- 2) **July 1, 2020:** DCA-20-27 renewed the waiver for the July 1, 2020, August 31, 2020, period.
- 3) **August 27, 2020:** DCA-20-53 renewed the waiver for the March 31, 2020, and October 31, 2020, period.
- 4) **October 22, 2020:** DCA-20-69 renewed the waiver for the March 31, 2020, and December 31, 2020, period.
- 5) **December 15, 2020:** DCA-20-89 renewed the waiver for the January 1, 2021, and February 28, 2021, period.
- 6) **Feb 26, 2021:** DCA-21-117 renewed the waiver for the March 1, 2021, and March 31, 2021 period.
- 7) **March 30, 2021:** DCA-21-134 superseded previous waivers and waived requirements going back to March 31, 2020, and until May 31, 2021.
- 8) **June 3, 2021:** DCA-21-152 superseded DCA-21-134 and waived requirements for the March 31, 2020, and July 31, 2021, period.
- 9) **July 26, 2021:** DCA-21-175 superseded DCA-21-152 and waived requirements for the March 31, 2020, and September 30, 2021, period.
- 10) **September 28, 2021:** DCA-21-194 was the final order and waived the October 1, 2021, and October 31, 2021, period.

## **Enforcement**

CBOT is responsible for enforcing the requirements of the Occupational Therapy Act. The purpose of enforcement is to ensure that licensees continue to adhere to licensing requirements and protect the public from those that do not.

To that end, CBOT is required to investigate potential violations. Cases without sufficient evidence or that do not allege a violation are closed without further action. If it finds there was a violation, the Enforcement Unit may take several types of actions depending on the severity of the violation.

For minor violations, CBOT may send a Notice of Warning letter or issue a citation, which may include a fine up to a maximum of \$5,000 or an order of abatement. For more significant violations, it may seek formal disciplinary actions against a license, including probation, suspension, or revocation. CBOT can initiate formal disciplinary action by referring the matter to the Office of the Attorney General to prepare a case for prosecution in an administrative proceeding. For violations that also involve criminal conduct, CBOT can also refer the case to law enforcement.

Like other licensing boards, CBOT relies on complaints and other information submitted by consumers, licensees, employers, relevant organizations, and governmental entities, including arrest and conviction

notices from law enforcement. CBOT enforcement staff may also open a case based on internal information reviewed by staff.

Additionally, the DCA's 2010 Consumer Protection Enforcement Initiative (CPEI) introduced performance measures and set target cycle timelines with the aim of resolving investigations and disciplinary proceedings in a timely manner. Consumers, licensees, and the public benefit from the expedient resolution of investigations and disciplinary proceedings. The CPEI timelines track statistics for every stage of the enforcement process, including the following statistics quarterly:

- Performance Measure 2 (PM2): new complaint intake and the average number of days to close a complaint or assign it for an investigation (target average of 10 days).
- Performance Measure 3 (PM 3): investigation cases completed and the average number of days to complete an investigation (target average of 270 days).
- Performance Measure 4 (PM4): formal disciplinary actions completed and the average number of days to complete a disciplinary action (target average of 540 days).
- Total probationers and probation completions.
- Performance Measure 7 (PM7) new probationers and the average number of days from assignment to first contact (target average 15 days).
- Performance Measure 8 (PM8): probation violations and the average number of days to initiate appropriate action (target average 30 days).

The statistics reported by the CBOT indicate that its cycle times have mostly met the performance targets since FY 2016-17. However, there were some exceptions:

- 1) In FY 2016-17, CBOT was an average of 33 days over its 270-day target for PM3, its investigations not sent to the Office of the Attorney General (OAG).
- 2) In FYs 2016-17 and 2020-21, CBOT had difficulty meeting the PM4 target 540 days (18 months) to complete formal discipline cases referred to the OAG. It was an average of 63 and 84 days over its target respectively. However, few boards report consistently meeting this target cycle time.

Target timelines are discussed further on page 20 under Current Sunset Review Issues, Issue #7: Enforcement Timelines.

CBOT reports no significant changes or trends related to enforcement. It saw a slight spike in disciplinary outcomes and denials in FY 2018-19, but there was no identifiable reason for it. It also saw an increase in its investigations from a low of 397 in FY 2016-17 to a high of 1,009 in FY 2020-21, but it reports that the spike can be attributed to internal controls CBOT implemented for potential unlicensed practice

violations stemming from delinquent renewals and address change violations. Further, the investigations are relatively minor. For example, CBOT reports that one change is running a monthly report identifying licensees that have renewed delinquent. The investigation, in that case, is simply contacting the licensee to determine if they practiced on an expired license.

### **Cost Recovery**

All DCA boards have the authority to recover costs from licensees related to enforcement activities except for the Medical Board of California.<sup>16</sup> All enforcement cases referred to the Attorney General's Office that result in the filing of an accusation have the potential for a cost recovery order. If the case goes to an administrative hearing, an Administrative Law Judge may award cost recovery.

CBOT indicates that it seeks cost recovery in all cases where cost recovery is authorized. CBOT seeks the award of costs when settling cases with a stipulation, as well as in decisions provided through an administrative hearing. However, not all licensees are ordered to reimburse CBOT for all costs, and licensees who do not seek license reinstatement are difficult to collect from. In addition, the use of the Franchise Tax Board Intercept Program is limited to lottery winnings and tax refunds.

Overall, CBOT recovers very little of its overall enforcement expenditures, which is not uncommon among licensing boards. In the last four FYs, CBOT collected between \$9,000 and \$19,000 in cost recovery each FY, averaging approximately \$12,000 per FY.

### **Additional Background Information**

For additional information regarding CBOT's responsibilities, operations, and functions, please see CBOT's *2021 Sunset Review Report* and attachments. The report is available on the Assembly Committee on Business and Professions website: [abp.assembly.ca.gov/reports](http://abp.assembly.ca.gov/reports).

## **PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS**

CBOT was last reviewed in 2017. A total of 15 issues were raised by the Committees at that time. Below are actions that have been taken over the last four years to address these issues. Those that were not addressed and may still be of concern are discussed further under the "Current Sunset Review Issues" section.

- 1) **ISSUE #2: Does the CBOT use its administrative committee to address any ongoing issues?**  
CBOT reports that it uses its administrative committee to provide direction to the executive officer regarding ongoing administrative issues or to make recommendations to the full board. The information regarding the various issues is shared with members at meetings in the President's

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<sup>16</sup> BPC §125.3.

Remarks, Board Member Remarks, or Executive Officer's Report, all of which are provided during a publicly noticed meeting.

- 2) **ISSUE #4: Are there duplicative requirements for out-of-state and military applicants that can be streamlined?** CBOT acknowledges there are several duplicative requirements for out-of-state licensed and military applicants, including submission of the qualifying degree transcript, verification from the NBCOT that the applicant has passed the national examination, and letters of good standing from states where the applicant holds or held a license to verify if discipline had been imposed on their license. However, CBOT reports that it has been a long-standing practice for staff to obtain primary source verification of applicant documentation and not delegate this task to other institutions and entities.
- 3) **ISSUE #6: What has the CBOT discovered about current workforce trends since implementing its workforce survey?** Due to the redirection of staff during BreEZe implementation, CBOT stated it had not been able to devote resources to exploring workforce issues. Once BreEZe was implemented in January 2016, CBOT was able to incorporate a voluntary survey into the system to collect the following from initial applications and renewals:
- Employment Status.
  - Location (zip code) of the primary place they practice and how many hours they work.
  - Location (zip code) of any secondary place of practice and how many hours they work.
  - Number of years worked.
  - Self-employed and if so how many hours they work.
  - Whether they have completed another degree beyond the qualifying degree.
  - When they plan to retire.
  - Areas of current practice.
  - Ethnic background and foreign languages spoken.

CBOT reports that it has been unable to retrieve any demographic data in its renewal and initial license survey due to limitations in its licensing database, BreEZe. Staff report that they have submitted a request ticket to the DCA that will allow for the extraction of the information. It will also be a temporary solution until the DCA implements a department-wide demographic collection tool in compliance with AB 133 (Committee on Budget), Chapter 143, Statutes of 2021.



- 4) **ISSUE #7: Should the CBOT resume checking the National Practitioner Data Bank for adverse actions against applicants and licensees?** CBOT followed the recommendation and ultimately obtained authority to charge applicants the NPDB query fee in statute. CBOT began conducting NPBD queries on all applicants in January 2019. However, due to receiving only two reports, one of which had been generated by CBOT, and the time involved by staff inputting an applicant's personal information into the system, CBOT decided to stop charging the query fee and conducting the NPDB queries in April 2020.

While no longer submitting a query for all applicants, CBOT states that it still conducts NPDB queries on applicants when circumstances are warranted, such as incorrect or inconsistent information in an application.

- 5) **ISSUE #8: Is the CBOT concerned about ongoing costs for BreEZe?** CBOT's BreEZe costs for maintenance have dropped considerably after implementation. It also hired a staff services analyst whose primary duty is to serve as the CBOT's single point of contact with the Breeze Team in developing new service requests and testing system modifications. Other licensing, administration, and enforcement staff are no longer required to split their regularly assigned duties to assist with Breeze systems modifications.
- 6) **ISSUE #9: Is there a way to disaggregate enforcement data to make it more useful?** CBOT reports that the BreEZe system can disaggregate some enforcement data via new reports and tools. Since the last sunset review, DCA has enhanced existing reports and developed new reports. If there is not a report for specific data that CBOT needs, there is the Quality Business Interactive Reporting Tool (QBIRT) which allows staff to identify additional data. For more specific or sophisticated needs, CBOT staff can submit a ticket to request DCA staff to customize a report.
- 7) **ISSUE #10: Should the CBOT use other technologies the DCA might have to improve submission compliance and processing times for primary source documentation?** CBOT reports that, due to limitations in the ability of certain users and providers to access the cloud, it did not move forward with using cloud-based access. However, it has requested a change in BreEZe that would allow licensees to upload copies of their continuing education certificates at the time of renewal. CBOT reports that this could be a convenient repository of documentation for licensees and could also be used by staff in the event the licensee's renewal is audited in the future.

If the licensee chooses to not upload their certificates at the time of renewal but are later audited, an additional change requested to BreEZe will allow the licensee the option to access their BreEZe account to upload copies of the certificates, in addition to receiving hard copies via regular postal mail.

- 8) **ISSUE #11: Should the CBOT utilize additional survey types to improve its survey response rates?** CBOT was not able to send out a consumer satisfaction survey or other surveys before this sunset report. Therefore, no improvements nor continued dissatisfaction have been identified.

However, it has since renewed its Survey Monkey subscription and requested the information be added to its website. To supplement that, CBOT will email a link to the survey to those licensees with an email address on file and post the link on social media.

- 9) **ISSUE #13: Should the Practice Act be amended to change the CBOT’s ratio of public members to professional members?** CBOT believes that the current composition of board members, including public and licensee members, provides a fair and balanced way to ensure consumer protection.

## **CURRENT SUNSET REVIEW ISSUES**

The following are unresolved issues relating to CBOT and other areas of concern for the Committees to consider along with background information concerning the issues. There are also recommendations the Committee staff have made regarding issues or problem areas that need to be addressed. CBOT and other interested parties, including the profession, have been provided with this background paper and can respond to the issues presented and the recommendations of staff.

### ***BUDGET ISSUES***

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#### **ISSUE #1: FUND CONDITION. What is needed to address CBOT’s structural budget deficit?**

**Background:** As discussed on page 6 of this paper, and under Issue #1 from the prior sunset review, CBOT has intentionally operated with less revenue than its expenses to reduce its reserve levels in compliance with statutory requirements. However, unless CBOT can increase its revenue, or further reduce its expenditures, it is projected to become insolvent by FY 2023-24.

While CBOT reports it is doing what it can to reduce expenditures, many cost pressures are out of its control. For example, each FY CBOT pays a DCA pro rata cost, which is intended to reimburse the DCA for services rendered to CBOT (and some services are unavoidable, such as teleconferencing and mail). However, it is a complex calculation that is difficult to budget for and can fluctuate widely year-to-year for any board. In FY 2020-21, CBOT’s pro rata costs increased by approximately \$256,000, a 7% increase from the prior FY, making up 31% of CBOT’s overall expenditures.

In addition, in July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor’s Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without any meaningful notice to any client agencies.

CBOT also reports a large increase in expenditures on court reporters. The Office of Administrative Hearings contracts with court reporters to provide transcription services during a hearing. Recent

contract amendments, changing from hourly to flat all day or one-half day rates (without regard to hearing length), as well as rates varying by geographical area, are attributed to the rising costs.

Other cost pressures out of CBOT's control include steady increases in state worker pay and benefits, rent, and general costs due to inflation. In addition, the overall workload increases as the licensee population also steadily increases.

As a result, it is unlikely CBOT will be able to address its budget deficit through expenditure reduction. Therefore, it is currently considering increasing its fees but has not decided on any specific proposal. At the CBOT's recent February 15, 2022, board meeting, staff discussed the budget issue and presented several proposals and budget scenarios. CBOT has several options, including a straight fee increase across all fees, seeking statutory changes to untether the initial license fee from the renewal fee, creating new fees for certain services it provides for free, among other things. New fees could include minor services such as printing pocket cards or more major services such as approving advanced practice education providers (discussed further under Issue #6 on page 20).

CBOT did not make a decision at that meeting and created an ad hoc committee to review its budget and make recommendations on an appropriate proposal.

**Staff Recommendation:** *CBOT should update the Committees on its progress in reviewing the proposals, and if a proposal is decided upon, complete the Committees' Fee Bill Questionnaire.*

### ***ADMINISTRATIVE ISSUES***

#### **ISSUE #2: STAFF VACANCIES. Are additional changes or resources needed to address CBOT's staff vacancies?**

**Background:** CBOT reports 6.5 vacant positions of its 17.7 authorized positions, a vacancy rate of 37%. In addition, CBOT began succession planning efforts in late 2020 but reports that completion of a plan was hindered due to the COVID-19 pandemic, vacancies, and other priorities.

Specifically, CBOT reports that in July 2021, CBOT's Probation Monitor retired, and two other staff members accepted promotions at other state agencies. A Retired Annuitant who was hired to help with the Sunset Report and HR packages resigned due to health issues.

It also reports that one enforcement staff member returned to their former department effective February 1, 2022, but a new staff member joined February 7, 2022, and another will join April 7, 2022.

On November 1, 2021, a part-time Office Assistant retired, and on February 1, 2022, CBOT's Enforcement Manager retired. To assist in the interim, in January 2022 CBOT submitted a request for a current employee to serve in an out-of-class assignment as the acting Enforcement Manager; this request was approved in late February 2022. The out-of-class assignment was requested to provide oversight of the enforcement program until a permanent manager is recruited and hired. CBOT plans to submit the

recruitment package for that position by March 15, 2022. CBOT reports In November 2021 a new Probation Monitor and Retired Annuitant (enforcement) were also hired.

CBOT reports that other position recruitment efforts will become a priority in 2022, and planned on hiring another Retired Annuitant in December 2021 to assist with re-classifying several positions and recruitment efforts to fill vacancies, however, the Retired Annuitant was unable to start working until late January 2022.

**Staff Recommendation:** *CBOT should update the Committees on its progress in filling its staff vacancies and completing its succession planning.*

### **LICENSING ISSUES**

#### **ISSUE #3: OCCUPATIONAL THERAPY CORPORATIONS. Should the Moscone-Knox Professional Corporation Act be amended to allow OTs to form professional corporations?**

**Background:** The Moscone-Knox Professional Corporation Act<sup>17</sup> authorizes the formation of various healing arts professional corporations and establishes which healing arts licensees who are not of the same license type as the corporation may be shareholders, officers, and directors of that corporation. Any person licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed by these professional corporations. Current law specifies that OTs may serve as a non-controlling director, shareholder, officer, or employee of a physical therapy corporation, but does not authorize OTs to form OT corporations.

There is no clear policy reason for the limitation—the act went into law with a handful of corporation types and has been amended on a case-by-case basis over time. That said, if OTs are added, there may be additional changes for CBOT to consider on the regulatory and licensing side once new business and care delivery models are formed.

**Staff Recommendation:** *The Committees may wish to amend the Moscone-Knox Professional Corporation Act to allow OTs to form professional corporations and consider whether additional licensing or regulatory requirements are needed if so.*

#### **ISSUE #4: INDEPENDENT CONTRACTORS. Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for CBOT licensees working as independent contractors?**

**Background:** In the Spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly changed the factors that determine whether a worker is legally an employee or an independent contractor. In a case involving the

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<sup>17</sup> Corporations Code §§ 13400-13410.

classification of delivery drivers, the California Supreme Court adopted a new test comprised of three elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The test, commonly referred to as the "ABC test," potentially reaches into numerous fields and industries utilizing workers previously believed to be independent contractors, including occupations regulated by entities under the DCA. In the following year, AB 5 (Gonzalez), Chapter 296, Statutes of 2019 codified the *Dynamex* ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. As a result, the new ABC test must be applied and interpreted for all non-exempted licensed professionals.

***Staff Recommendation:*** *CBOT should inform the committees of any discussions it has had about the Dynamex decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.*

**ISSUE #5: OTA WORKFORCE NEEDS. What steps has CBOT taken, or plans to take, related to the findings of the OTA workforce study discussed in its sunset report?**

**Background:** In 2019, the California Community Colleges Centers of Excellence for Labor Market Research, in collaboration with CBOT, conducted a California OTA Workforce Needs Assessment. It was the only state-level survey specifically focused on the California Occupational Therapy Assistant (OTA) workforce. The survey generated information on the supply of OTAs in California that is needed to plan for well-prepared and well-educated OTAs in sufficient numbers to meet the healthcare needs of the state.

The survey provided insight into the demographic composition of OTAs in California, their education, licensure, job characteristics such as work tasks, scheduling, and compensation, and the future of the OTA profession, including retirement and potential policy changes.

***Staff Recommendation:*** *CBOT should update the Committees on its use of the information generated by the survey and any steps it plans to take in response to the report.*

## *EDUCATION ISSUES*

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**ISSUE #6: ADVANCED PRACTICE CERTIFICATES. Should advanced practice certificates continue to be required for new graduates, and should the certificates eventually be phased out?**

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**Background:** When CBOT was established in 2000, it was not clear if there were sufficient national minimum education standards relating to providing certain services, including hand therapy; physical agent modalities; use of topical medications; and swallowing assessment, evaluation, or intervention.

As a result, those services were established as advanced practice areas in statute. Currently, OTs are required to meet education and competency and CBOT approval to provide services in advanced practice areas. However, national educational standards have begun to include these services as part of the base curriculum. CBOT reports that it will revisit this issue to determine the necessity of these requirements for OT students graduating after a certain date.

In the meantime, the oversight and approval of advanced practice course providers generates workload, taking staff time and requiring a subject matter expert's review. However, providers do not pay a fee for approval. As mentioned under Issue #1 on page 17 CBOT is exploring the possibility of charging a fee for approval of the course. It is also considering requiring a subsequent renewal because providers have failed to notify CBOT of course content updates and any changes in instructors, requiring CBOT to perform an additional review.

Given that the additional advanced practice requirements may be duplicative of the base education provided in OT training programs, and the approval of providers generates workload, it may be worth phasing the requirement out.

**Staff Recommendation:** *CBOT should update the Committees on its review of the advanced practice requirements, including whether there are still consumer protection benefits and, if not, whether there is a potential timeline for phasing out the requirements.*

## *ENFORCEMENT ISSUES*

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**ISSUE #7: ENFORCEMENT TIMELINES. What factors prevent CBOT from meeting its enforcement targets, and what can be done to address them?**

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**Background:** As noted on page 12 of this paper, there have been some instances where CBOT has not met its enforcement target timelines. Ideally, enforcement actions should be as expedient as possible. If a licensee is not practicing safely, appropriate action is needed to ensure the protection of the public. If a licensee has not committed or is at risk of committing any wrongdoing, they should be allowed to return to work as soon as possible. Further, drawn-out enforcement actions can be a drain on resources at licensing boards and other partnering agencies.

To help ensure that boards strive to resolve cases quickly, they establish target timelines. For cases not referred to the Office of the Attorney General (OAG) (PM3, no formal disciplinary action), CBOT's target is 270 days. CBOT did not meet this target in FY 2016-17 and was an average of 33 days over. In FY 2017-18, CBOT was an average of 26 days over its target.

For cases that are referred to the OAG (PM4, formal disciplinary action), CBOT's target is 540 days. It was not able to meet this target in FYs 2016-17 (an overage of 63 days over) and 2020-21 (an average of 84 days over). PM4 can be a difficult target to meet as formal discipline may involve wait times out of the board's control. They require a greater level of investigation and coordination with the OAG and potentially other agencies and states.

For FY 2016-17, CBOT had three cases that went over 1,200 days. CBOT reports that one case involved unprofessional conduct charges by a licensee that was residing and practicing in Oregon and Washington. From the point CBOT was advised of the incident until discipline was rendered by the two states, the matter took two years. In the second case, adjudication of a criminal conviction took 405 days with administrative adjudication taking 616 days. In the third case, a sworn investigation took 365 days with administrative adjudication taking 536 days.

For FY 2020-21, CBOT had three cases that took over three years from receipt of the complaint until discipline was rendered. One case took a total of 1,305 days which predominantly consisted of a sworn investigation that took 668 days. The other two cases taking 2,106 and 2,155 days respectively pertained to violations involving advanced practice services in hand therapy and physical agent modalities which required extensive records gathering and multiple reviews by an expert to render a decision on whether the practitioners deviated from standard practice.

While the complexity of certain cases and the involvement of other states appear to be contributors to the delays in PM4 cases there may still be ways to reduce timelines or identify potential areas of delay at the board, DCA's Division of Investigation, or the OAG. For PM3 cases, there may be factors that can help reduce delays in the boards' investigation, such as lack of knowledge on the part of licensees.

For example, Issue #3 from the prior sunset review discussed the fact that many of CBOT's violations result from involved ethical issues, documentation, supervision (or lack thereof), aiding and abetting unlicensed practice, and failing to follow procedural license requirements, such as failing to complete continuing competence requirements or provide a timely address change.

At the time, the committee staff recommendation was to explore modifying the applicant attestation to include a statement that the applicant has read the laws and regulations or exploring an ethics training requirement. Ensuring licensees are aware of ethical requirements, as well as the extent of CBOT's authority, may reduce the number of required investigations or improve licensee compliance with CBOT investigative requests. CBOT has reported that it is still reviewing this matter.

**Staff Recommendation:** *CBOT should discuss any factors that may contribute to enforcement or investigation delays, and whether any steps are being taken to address them, including the use of an ethics or jurisprudence tool or requirement.*

### **COVID-19 ISSUES & RESPONSE**

**ISSUE #8: COVID-19.** Since March of 2020, the DCA has approved waivers through the Governor’s executive orders, which affect licensees and future licensees alike. Do any of these waivers warrant an extension or statutory changes?

**Background:** In response to the COVID-19 pandemic, the Governor issued executive orders to address the immediate COVID-19 pandemic, including impacts on the state’s healthcare workforce stemming from the virus. On, March 4, 2020, the Governor issued a State of Emergency declaration, as defined in Government Code § 8558, which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to allow licensed healthcare professionals from outside of California to practice in California without a California license. Under BPC § 900, licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the EMSA director.

Following that executive order, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the DCA director to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic, including rules relating to examination, education, experience, and training.

One of the waivers helped address Issue #12 from the prior sunset review, which raised issues related to CBOT’s ability to webcast meetings due to limited DCA resources and obligations with other boards. Since the pandemic, all meetings have been conducted virtually over the internet on the WebEx platform making meetings more accessible to the public, eliminating the need to webcast. It would be helpful to see whether waivers such as this should be extended beyond the State of Emergency.

**Staff Recommendation:** *CBOT should advise the Committees on the use of the COVID-19 waivers and the ongoing necessity of the waivers.*

**ISSUE #9: COVID-19 PROVIDER MENTAL HEALTH.** Under ordinary circumstances, the work of healthcare providers is mentally and emotionally challenging. Are there new issues arising from or, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?

**Background:** Throughout the COVID-19 pandemic, healthcare workers and first responders have been caring for COVID-19 patients through multiple deadly surges, including a record-shattering death toll in December of 2020. Even for those who do not directly treat COVID-19 patients, the events surrounding the pandemic, including lockdowns and isolation protocols have changed the landscape of care delivery.



The Centers for Disease Control notes that “[p]roviding care to others during the COVID-19 pandemic can lead to stress, anxiety, fear, and other strong emotions. . . . Experiencing or witnessing life-threatening or traumatic events impacts everyone differently. In some circumstances, the distress can be managed successfully to reduce associated negative health and behavioral outcomes. In other cases, some people may experience clinically significant distress or impairment, such as acute stress disorder, post-traumatic stress disorder (PTSD), or secondary traumatic stress (also known as vicarious traumatization). Compassion fatigue and burnout may also result from chronic workplace stress and exposure to traumatic events during the COVID-19 pandemic.”<sup>18</sup>

Healthcare workers are essential to the state of California. Given the length and the unique conditions of the COVID-19 pandemic, it may be beneficial to track trends and identify potential challenges and solutions in delivering mental health care and support for healthcare workers who have been under extreme physical and mental pressure since the start of the coronavirus pandemic.

**Staff Recommendation:** *CBOT should discuss any findings related to the mental and behavioral healthcare needs of frontline healthcare providers arising from the COVID-19 pandemic.*

### *EDITS TO THE PRACTICE ACT*

**ISSUE #10: TECHNICAL EDITS.** Are there technical changes to the Practice Act that may improve CBOT’s operations?

**Background:** CBOT has suggested some technical changes to the Occupational Therapy Act in its report that may enhance or clarify the act or assist with consumer protection, including:

- A conforming change to the ability for OTs to supervise up to three OTAs at one time.
- An amendment acknowledging entry-level doctoral capstone experiences concerning supervised clinical practice.
- Other technical or conforming changes.

**Staff Recommendation:** *CBOT should continue to work with the Committees on potential changes.*

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<sup>18</sup> Centers for Disease Control, *Healthcare Personnel and First Responders: How to Cope with Stress and Build Resilience During the COVID-19 Pandemic*, last updated December 16, 2020, [www.cdc.gov/coronavirus/2019-ncov/hcp/mental-health-healthcare.html](http://www.cdc.gov/coronavirus/2019-ncov/hcp/mental-health-healthcare.html).

*CONTINUED REGULATION OF THE PROFESSION*

**ISSUE #11: SUNSET EXTENSION. Should the current CBOT be continued and continue regulating the practice of occupational therapy?**

**Background:** A review of the issues raised since the last review demonstrates that CBOT continues to protect the public and that it works towards improving its operations. However, there are still issues that need to be addressed, including its current budget deficit, its enforcement timelines and high prevalence of ethical and other non-practice-related violations, and the question of its advanced practice certificate requirements.

**Staff Recommendation:** *CBOT's current regulation of occupational therapy should be continued and reviewed again on a future date to be determined.*

# **AGENDA ITEM 13**

## **PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**



Monday, February 17, 2025

Ms. Beata Morcos and the Executive Board  
California Board of Occupational Therapy  
1610 Arden Way, Suite 121  
Sacramento, CA 95825

**Re: Follow-Up on Vote from November 14, 2024 CBOT Meeting re: Regulations Sections 4180 and 4181**

Dear Ms. Morcos and the California Board of Occupational Therapy (CBOT) Executive Board,

On behalf of the Occupational Therapy Association of California (OTAC) and the American Occupational Therapy Association (AOTA), we are writing to follow-up on the vote from the November 14, 2024, CBOT meeting held in San Rafael, California, at Dominican University. During this meeting, the CBOT voted on proposed changes to supervision standards to California Code of Regulations (CCR), Title 16, Division 39, Section 4181 "Supervision Parameters." In particular, a motion passed during that meeting to strike OTAs from a list of people that could be supervised at any one time by an occupational therapist.

**(g) Occupational therapists may supervise no more than a total of three of the following:**

**(1) Level I fieldwork students directly engaged in client-related tasks or patient/client care;**

**(2) Level II fieldwork students, at any one time;**

**(3) Doctoral capstone students completing a clinical, direct patient/client care experience, at any one time;**

**(4) Occupational therapist limited permit holders, at any one time; and**

**(5) Occupational therapy assistant limited permit holders, at any one time; and**

**(6) Occupational therapy assistants.**

This motion was on the table to limit the number of people an occupational therapist (OT) could supervise to three, including: aides (which should be added to the list), level I and level II fieldwork students, doctoral capstone students, limited permit holders, and occupational therapy assistants (OTAs). Kristen Neville, Manager of State Affairs for the AOTA, and Samia Rafeedie, President of the OTAC, attended the meeting and provided information to the CBOT on how this would potentially impact practice at the state and national levels.

Having a cap on the number of people an OT could supervise (to 3 people) at any one time would limit access to services, the number of students an OT or occupational therapy assistant can agree to have, and it may lead to similar regulations being implemented in other states. The CBOT was open to dialogue about what this means and the impact this change could have on the way we practice. The



CBOT agreed with recommendations presented to “strike OTAs” from the list, since statute about the maximum number of OTAs an OT can supervise is already in place at three. CBOT also agreed to further clarify the definition of level II fieldwork supervision so that it is aligned with the definition provided by the Accreditation Council for Occupational Therapy Education (ACOTE®).

OTAC and AOTA representatives appreciated the dialogue and collaboration by all, as the conversation and decisions were robust and meaningful. Consensus was established by CBOT members during the vote, with board members agreeing on the recommendations of AOTA and OTAC to strike OTAs from this list. There were concerns brought forward by legal counsel and at the time, the suggestion was that the Department of Consumer Affairs would be consulted on the matter of supervision related to an OT who may be supervising 3 OT assistants and each of those OT assistants also supervising students, rehabilitation aides, or OT assistants with limited permits (for example).

We patiently await the next steps by the CBOT to hopefully finalize these recommendations which were agreed upon by the CBOT on November 14, and appreciate any updates you can offer at this time.

Sincerely,

A handwritten signature in black ink that reads "Samia H. Rafeedie". The signature is written in a cursive style.

Samia H. Rafeedie, OTD, OTR/L, BCPR, CBIS, FAOTA  
President the Occupational Therapy Association of California

and

A handwritten signature in black ink that reads "Kristen Neville". The signature is written in a cursive style.

Kristen Neville  
Manager, State Affairs of the American Occupational Therapy Association

## **AGENDA ITEM 14**

**DISCUSSION ON REQUIRING PROFESSIONAL DEVELOPMENT  
UNITS PERTAINING TO THE BOARD'S LAWS AND REGULATIONS  
AND POSSIBLE IMPLEMENTATION.**

# State Licensure Boards Requiring Jurisprudence Exam or Continuing Education Pertaining to Laws and Regulations

<b>State</b>	<b>Initial Licensure</b>	<b>Continuing Licensure</b>
Alaska	Jurisprudence Questionnaire	Jurisprudence Questionnaire
Florida	May require applicant to certify (by examination) competency in state laws and rules	2 hours of Laws and Rules CE
Kentucky	Jurisprudence Exam	N/A
Maryland	Jurisprudence Exam	N/A
Michigan	Jurisprudence Exam	N/A
Missouri	Jurisprudence Exam	N/A
Nevada	Jurisprudence Exam	Jurisprudence Exam (Required every 5 years – worth 2 CEUs)
New Mexico	Jurisprudence Exam	N/A
North Carolina	Jurisprudence Exam	N/A
North Dakota	Jurisprudence Exam	May require Jurisprudence Exam
Ohio	Jurisprudence Exam	1 hour of ethics, cultural competence, OR jurisprudence
Oregon	“Law/Ethics Exam”	N/A
South Carolina	Jurisprudence Exam	N/A
Tennessee	May require up to 1 hour of CE in TN jurisprudence for applicants that passed NBCOT over 3 years prior and are not currently licensed and practicing in another state	1 hour jurisprudence CE per biennial renewal
Texas	Jurisprudence Exam	N/A
Washington	Jurisprudence Exam	N/A
Wisconsin	Jurisprudence Exam	N/A

# Possible Proposed Text to Implement Jurisprudence Requirements

## From the Current Regs Package

(a) Each licensee renewing a license under Section 2570.10 of the Code shall submit evidence of meeting continuing competency requirements by having completed 24 professional development units (PDUs) during the preceding renewal period, or in the case of a license delinquently renewed, within the two years immediately preceding the renewal, acquired through participation in professional development activities.

(1) One hour of participation in a professional development activity qualifies for one PDU;

(2) One academic credit equals 10 PDUs;

(3) One Continuing Education Unit (CEU) equals 10 PDUs.

(b) For a license renewed on or after January 1, 2025, of the 24 PDUs required for each renewal period, licensees must complete:

(1) A minimum of two (2) units must be related to ethics in healthcare, and

(2) One course shall pertain to culturally relevant practice, socio-cultural factors, working with diverse populations and/or bias.

(3) One course shall pertain to California Business and Professions Code Division 2 Chapter 5.6 Occupational Therapy [2570 – 2572] and shall pertain to California Code of Regulations Title 16, Division 39 [4100 – 4187].

## Ohio Regulations

Ohio Administrative Code

Rule 4755:1-3-01 Continuing Education

(A) Pursuant to division (C) of section 4755.06 of the Revised Code, no person shall qualify for licensure renewal as an occupational therapist or occupational therapy assistant unless the license holder has shown to the satisfaction of the occupational therapy section that the license holder has completed twenty contact hours of continuing education activities within the two year renewal cycle.

...

(5) License holders shall complete at least one contact hour of ethics, jurisprudence, or cultural competence education per renewal cycle. The one hour ethics, jurisprudence, or cultural competence requirement may be fulfilled by completing an acceptable activity outlined in paragraph (B) of this rule that contains at least one hour addressing professional ethics, jurisprudence, or cultural competence. In addition, any presentation by the occupational therapy section meets the ethics, jurisprudence, or cultural competence requirement.

...

(C) Acceptable continuing education activities may include:



...

(13) Jurisprudence examination. One contact hour may be earned for completing and passing the Ohio occupational therapy jurisprudence examination. This contact hour may be utilized only once per renewal cycle for continuing education credit. Proof of completion is the graded examination. This contact hour may be used to fulfill the ethics, jurisprudence, or cultural competence requirement established in paragraph (A)(5) of this rule.

## Tennessee Regulations

### 1150-02-.12 CONTINUED COMPETENCE.

On January 1, 2006 the Board shall begin to notify applicants for licensure renewal of the continued competence requirements as provided in T.C.A. § 63- 13-204(d). Effective January 1, 2022, the Board shall require each licensed occupational therapist and occupational therapy assistant to participate in a minimum number of activities to promote continued competence during the twenty-four (24) months that precede the licensure renewal month. The renewal cycle will begin the first day of the licensee's birthday month and continue to the last day of the month preceding the licensee's birthday month.

...

(6) One (1) hour of the required twenty-four (24) continued competence credits shall pertain to the occupational therapy portions of T.C.A. §§ 63-13-101, et seq., the Tennessee Occupational and Physical Therapy Practice Act, and shall pertain to Chapter 1150-02, General Rules Governing the Practice of Occupational Therapy.

# **AGENDA ITEM 15**

## **REGULATORY UPDATE.**

# REGULATIONS UPDATE REPORT

## *Pending Rulemaking files: In-Process*

Rulemaking File Section and Subject	Status	Date Submitted for approval		Date Returned to Board		Date Resubmitted for approval		Date Returned (If applicable)		Dates Submitted to the Director & filed with the Office of Administrative Law (OAL)
		Legal	Budget	Legal	Budget	Legal	Budget	Legal	Budget	
<b>Amend Sections:</b> 4110, Applications, 4111, Place of Filing, 4112, Review of Application, 4114, Abandonment of Application.	Text approved by Board 8/2023	9/29/23	9/29/23	10/3/23	10/3/23	11/30/23	11/30/23	N/A	N/A	Submitted to the Director: <b>1/7/25</b>  Approved by Agency: <b>2/3/25</b>  Filed with OAL: <b>2/4/25</b>  Publication Date: <b>2/14/25</b>
						4/5/24	4/5/24	N/A	N/A	
						6/27/24	6/27/24	N/A	6/28/24	
						8/1/24	8/1/24	N/A	N/A	
						N/A	11/5/24	N/A	N/A	

## REGULATIONS UPDATE REPORT

### *Pending Rulemaking files: In-Process*

Rulemaking File Section and Subject	Status	Date Submitted for approval		Date Returned to Board		Date Resubmitted for approval		Date Returned (If applicable)	
		Legal	Budget	Legal	Budget	Legal	Budget	OAL	Budget
<b>Amend Sections:</b> 4102, Filing of Addresses, 4150, Definitions 4151, Hand Therapy, 4152, Physical Agent Modalities, 4153, Swallowing Assessment Evaluation, or Intervention, 4154, Education and Training,	Text approved by Board 8/2023 & 11/2023	8/30/23	8/30/23	9/6/23	9/7/23	9/29/23	9/29/23	10/2/23	10/2/23
						3/22/24	N/A	4/25/24	10/16/24
						<b>11/5/24</b>	<b>11/5/24</b>	N/A	N/A

## REGULATIONS UPDATE REPORT

### *Pending Rulemaking files: Process Not Yet Started*

Rulemaking File Subject	Section(s)	Priority	Status	Comments
Application/Renewal Attestation	4110.1 4122	TBD	Text approved by the Board members. <b>Rulemaking file to be completed and submitted to DCA.</b>	Text would implement BPC 2570.6 and 2570.10
Definitions Supervision Parameters	4180 4181	TBD	4180 approved by Board 8/2023; 4181 approved by Board 11/2022 <b><i>NEW PROPOSED TEXT APPROVED BY BOARD 11/2024</i></b>	Text would implement BPC 2570.13
Physical Agent Modalities Application for Approval in Advanced Practice Areas	4152 4155	TBD	<b>Practice Committee to review and provide recommendations to the Board.</b>	Text would implement BPC 2570.3
Text for OTs to request to supervise more than three OTAs	TBD	TBD	<b>Practice Committee to review and provide recommendations to the Board.</b>	Text would implement BPC 2570.3(j)(2).
Patient record retention requirements when a business is closed/sold/inherited or has a change of ownership; or if practitioner is no longer in private practice	TBD	TBD	<b>Practice Committee to review and provide recommendations to the Board.</b>	Text provides specificity to Text in BPC 2570.185.