

AGENDA ITEM 14

DISCUSSION AND POSSIBLE RECOMMENDATION ON CONDUCTING A CALIFORNIA-SPECIFIC OCCUPATIONAL ANALYSIS FOR COMPLIANCE WITH BUSINESS AND PROFESSIONS CODE SECTION 139 AND THE DEPARTMENT OF CONSUMER AFFAIRS' LICENSURE EXAMINATION VALIDATION POLICY.

INCLUDES THE FOLLOWING:

- 14.1 BUSINESS AND PROFESSIONS CODE SECTION 139.
- 14.2 DEPARTMENT OF CONSUMER AFFAIRS LICENSURE EXAMINATION
VALIDATION POLICY OPES 22-01.
- 14.3 EXCERPT FROM THE BOARD'S MARCH 2017 MEETING MINUTES.
- 14.4 EXCERPT FROM THE BOARD'S JUNE 2017 MEETING MINUTES.
- 14.5 MEMORANDUM ON REQUIREMENTS FOR CONDUCTING A CALIFORNIA
OCCUPATIONAL ANALYSIS.



BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 1. DEPARTMENT OF CONSUMER AFFAIRS [100 - 472.5] (*Heading of Division 1 amended by Stats. 1973, Ch. 77.*)

CHAPTER 1. The Department [100 - 144.6] (*Chapter 1 enacted by Stats. 1937, Ch. 399.*)

139. (a) The Legislature finds and declares that occupational analyses and examination validation studies are fundamental components of licensure programs. It is the intent of the Legislature that the policy developed by the department pursuant to subdivision (b) be used by the fiscal, policy, and sunset review committees of the Legislature in their annual reviews of these boards, programs, and bureaus.

(b) Notwithstanding any other provision of law, the department shall develop, in consultation with the boards, programs, bureaus, and divisions under its jurisdiction, and the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners, a policy regarding examination development and validation, and occupational analysis. The department shall finalize and distribute this policy by September 30, 1999, to each of the boards, programs, bureaus, and divisions under its jurisdiction and to the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. This policy shall be submitted in draft form at least 30 days prior to that date to the appropriate fiscal, policy, and sunset review committees of the Legislature for review. This policy shall address, but shall not be limited to, the following issues:

- (1) An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.
- (2) Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.
- (3) Standards for review of state and national examinations.
- (4) Setting of passing standards.
- (5) Appropriate funding sources for examination validations and occupational analyses.
- (6) Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.
- (7) Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.
- (8) Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.

(c) Every regulatory board and bureau, as defined in Section 22, and every program and bureau administered by the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners, shall submit to the director on or before December 1, 1999, and on or before December 1 of each subsequent year, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs and personnel required to perform these functions. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, program, or bureau, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(d) The evaluation may be conducted by the board, program, or bureau, the Office of Professional Examination Services of the department, the Osteopathic Medical Board of California, or the State Board of Chiropractic Examiners or pursuant to a contract with a qualified private testing firm. A board, program, or bureau that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity. The department shall compile this information, along with a schedule specifying when examination validations and occupational analyses shall be performed, and submit it to the appropriate fiscal, policy, and sunset review committees of the Legislature by September 30 of each year. It is the intent of the Legislature that the method specified in this report be consistent with the policy developed by the department pursuant to subdivision (b).

(Amended by Stats. 2009, Ch. 307, Sec. 1. (SB 821) Effective January 1, 2010.)

DEPARTMENTAL POLICY



TITLE	LICENSURE EXAMINATION VALIDATION POLICY		
POLICY OWNER	OFFICE OF PROFESSIONAL EXAMINATION SERVICES		
POLICY NUMBER	OPES 22-01	SUPERSEDES	OPES 18-02
ISSUE DATE	November 23, 2022	EFFECTIVE	IMMEDIATELY
DISTRIBUTE TO	ALL EMPLOYEES		
ORIGINAL APPROVED BY	*Original Signature on File Kimberly Kirchmeyer Director		
NUMBER OF PAGES	1 of 11	ATTACHMENTS	NONE

POLICY

It is the policy of the Department of Consumer Affairs (DCA) that occupational analyses and examination development studies are fundamental components of licensure programs. Licensure examinations with substantial validity evidence are essential in preventing unqualified individuals from obtaining professional licenses. To that end, licensure examinations must be:

- Developed according to an examination outline that is based on a current occupational analysis.
- Regularly evaluated.
- Updated when tasks performed or prerequisite knowledge in a profession change, or to prevent overexposure of test questions.
- Reported annually, in terms of validation activities, to the Legislature.

APPLICABILITY

This policy applies to all employees, governmental officials, contractors, consultants, and temporary staff of DCA; and any of its divisions, bureaus, boards, and other constituent agencies. Within this policy, the generic acronym “DCA” applies to all of these entities. For purposes of this policy, “board” shall refer to all boards, bureaus, or committees.

PURPOSE

The purpose of this policy is to meet the mandate of Business and Professions (B&P) Code section 139 (a) and (b) directing DCA to develop a policy regarding examination development and validation, and occupational analyses; and B&P Code section 139 (c)

and (d) directing DCA to evaluate and report annually to the Legislature the methods used by each regulatory entity for ensuring that their licensing examinations are subject to periodic evaluations.

On September 30, 1999, the Office of Professional Examination Services (OPES) completed and distributed to its clients an internal publication “Examination Validation Policy” in compliance with B&P Code section 139 (a) and (b). In 2000, DCA policy “*Licensing Examinations – Reporting Requirements*” (OER-00-01) was established to meet the mandate of B&P Code section 139 (c) and (d). OER-00-01 has since been abolished. This new policy addresses the provisions of all four subsections of B&P Code section 139: (a), (b), (c), and (d).

AUTHORITY

- Business and Professions Code section 139 (a), (b), (c), and (d).
- Business and Professions Code section 101.6.
- Government Code section 12944 (a) of the Fair Employment and Housing Act.
- *Uniform Guidelines on Employee Selection Procedures (1978)*, adopted by the Equal Employment Opportunity Commission, Civil Service Commission (EEOC), Department of Labor, and Department of Justice.
- Civil Rights Act of 1964, as amended.

DEFINITIONS

Content domain is the realm of behaviors, knowledge, skills, abilities, or other characteristics that a particular test is intended to measure, as reflected by its examination outline, and about which the scores are generally intended to be generalized.

Content-related evidence of validity is the evidence that shows the extent to which the content of a selection procedure is a representative sample of work-related personal characteristics, work performance, or other work activities or outcomes.

Criterion-referenced passing score is a specified point in a distribution of scores at or above which candidates are considered successful in the selection process. By definition, the criterion-referenced passing score is related to a minimally acceptable competence criterion and is the same for all applicant groups.

Entry level in licensure testing refers to newly licensed individuals. In relation to examination development workshops, licensees 0-5 years post-licensure are generally considered sufficiently close to “entry level” to provide substantive information about this area.

Examination development specialists are individuals who are trained, experienced, and skilled in licensure-related occupational analysis; licensure-related examination planning, development, validation, administration, scoring, and analysis; and the professional and technical standards, laws, and regulations related to these tasks.

Examination outline is organized around the content domains drawn directly from the results of an occupational analysis. The content domains are comprised of the knowledge, skills, and abilities that have been determined to be the essential elements of competency for the occupation being assessed. In addition to the listing of content domains, the examination outline specifies the number or proportion of items that are planned to be included on each test form for each content domain. These proportions reflect the relative importance of each content domain to competency in the occupation. They are sometimes also referred to as test specifications, test plans, or test blueprints.

Minimum acceptable competence is the minimum level of knowledge, skill, and ability required of newly licensed individuals that, when the profession is performed at this level, would not cause harm to the public health, safety, or welfare.

Occupational analysis is a method used to gain an understanding of the work behaviors and activities required, or the worker requirements (i.e., knowledge, skills, abilities, and other personal characteristics), and the context or environment in which an organization and individual may operate. For occupational licensing, the term occupational analysis is preferred over job analysis or practice analysis because the scope of analysis is across a profession, not an individual job.

Reciprocity review of a licensure examination is an analysis of an occupational licensure examination accepted by another state. The purposes of the review are (1) to evaluate whether professional testing standards are being met and (2) to determine whether the examination is comparable (i.e., substantially similar) to the examination(s) used in California to meet initial licensure requirements. If an examination meets technical standards and professional guidelines, and if the examination is comparable to California examination(s), licensees who pass that examination may be deemed competent to practice in California.

Reliable measurement/reliability is the degree to which scores for a group of candidates are consistent over one or more potential sources of error (e.g., time, raters, items, conditions of measurement, etc.) in the application of a measurement procedure.

Review (Audit) of a national licensure examination is an analysis of a nationally developed and administered licensure examination for a profession. The goals of the review are (1) an assessment of whether professional testing standards are being met and (2) the identification of any critical aspects of the profession that are practiced in California and should be (but is not) tested nationally.

Subject matter experts (SMEs) are licensees who have a thorough knowledge of the work behaviors, activities, and responsibilities of job incumbents and the knowledge, skills, abilities and other characteristics needed for effective performance on the job. To participate in examination development workshops, SMEs should be practitioners currently possessing an active license in good standing and who are active in their profession. When contracting for their services, DCA refers to SMEs as Expert Consultants.

Validation is the process by which evidence of content accuracy is gathered, analyzed, and summarized.

Validity is the “degree to which accumulated evidence and theory support specific interpretations of test scores entailed by proposed uses of a test.” Validity is not a property inherent in a test; it is the degree to which the decisions based on that test are accurate. For licensing examinations, validity is interpreted as correctly differentiating between persons who are qualified to competently and safely practice a profession from those who are not.

PROVISIONS

A. VALIDATION TOPICS

B&P Code section 139 (b) requires OPES to address eight specific topics, plus any other topics necessary to ensure that licensing examinations conducted on behalf of DCA are validated according to accepted technical and professional standards.

1. AN APPROPRIATE SCHEDULE FOR EXAMINATION VALIDATION AND OCCUPATIONAL ANALYSIS AND CIRCUMSTANCES UNDER WHICH MORE FREQUENT REVIEWS ARE APPROPRIATE

Occupational Analysis Schedule

Generally, an occupational analysis and examination outline should be updated every 5 years to be considered current; however, many factors are taken into consideration when determining the need for a different interval. For instance, an occupational analysis and examination outline must be updated whenever there are significant changes in a profession’s job tasks and/or demands, scope of practice, equipment, technology, required knowledge, skills and abilities, or laws and regulations governing the profession. The board is responsible for promptly notifying the examination development specialist of any significant changes to the profession. This is true both for California-specific and national licensure examination-related occupational analyses.

Examination Validation Schedule

New forms of a licensure examination assist in the legal defensibility of the examination, prevent overexposure of test items, and keep the examination current. The decision to create an examination, or new forms of an examination, is made by the board responsible for the license in consultation with the examination development specialist. The creation of new examination forms depends on the needs of the testing program and the number of people taking the examination.

2. MINIMUM REQUIREMENTS FOR PSYCHOMETRICALLY SOUND EXAMINATION VALIDATION, EXAMINATION DEVELOPMENT, AND OCCUPATIONAL ANALYSES, INCLUDING STANDARDS FOR SUFFICIENT NUMBER OF TEST ITEMS

Boards have the ultimate responsibility to ensure that a licensure examination meets technical, professional, and legal standards and protects the health, safety, and welfare of the public by assessing a candidate's ability to practice at or above the level of minimum acceptable competence.

The inferences made from the resulting scores on a licensing examination are continuously validated. Gathering evidence in support of an examination and the resulting scores is an ongoing process. Each examination is created from an examination outline that is based upon the results of a current occupational analysis that identifies the job-related critical tasks, and related knowledge, skills, and abilities necessary for safe and competent practice. Examinations are designed to assess those knowledge, skills, and abilities. To ensure that examinations are job-related, SMEs must participate in all phases of examination development.

All aspects of test development and test use, including occupational analysis, examination development, and validation, should adhere to accepted technical and professional standards to ensure that all items on the examination are psychometrically sound, job-related, and legally defensible. These standards include those found in *Standards for Educational and Psychological Testing*, referred to in this policy as the *Standards*; and the *Principles for Validation and Use of Personnel Selection Procedures*, referred to in this policy as the *Principles*.

The *Standards* and *Principles* are used as the basis of all aspects of the policies contained in this document. The EEOC *Uniform Guidelines on Employee Selection Procedures* (1978) provide direction on the legal defensibility of selection-related examinations.

Other professional literature that defines and describes testing standards and influences professionals is produced by the following organizations:

- *American Educational Research Association (AERA)*
- *American Psychological Association (APA)*
- *Council on Licensure, Enforcement, and Regulation (CLEAR)*
- *Equal Employment Opportunity Commission (EEOC)*
- *Institute for Credentialing Excellence (ICE)*
- *National Council of Measurement in Education (NCME)*
- *Society for Industrial and Organizational Psychology (SIOP)*

Minimum Requirements for Psychometrically Sound Occupational Analysis

The minimum requirements for a psychometrically sound occupational analysis are as follows:

- Adhere to a content validation strategy or other psychometrically sound examination development method as referenced in a recognized professional source.
- Develop an examination outline from the occupational analysis.

- Gather data from a sample of current licensees in the State of California that represents the geographic, professional, and other relevant categories of the profession.

Minimum Requirements for Psychometrically Sound Examination Development and Validation

The minimum requirements for psychometrically sound examination development and validation are as follows:

- Adhere to the *Standards* and *Principles*.
- Document the process following recommendations in the *Standards* and *Principles*.
- Conduct with a trained examination development specialist in consultation with SMEs.
- Use an examination outline and psychometrically sound item-writing guidelines.
- Follow established security procedures.

Standards for Sufficient Number of Test Items

The number of items in an examination should be sufficient to ensure content coverage and provide reliable measurement. Both empirical data and the judgment and evaluation by SMEs should be used to establish the number of items within an examination. The empirical data should include results from an occupational analysis, item analysis, and test analysis.

The item bank for a licensure examination should contain a sufficient number of items such that: 1) at least one new form of the examination could be generated if a security breach occurred; and 2) items are not exposed too frequently to repeating examinees. Boards should develop an examination retake policy that minimizes the overexposure of test items.

3. SETTING PASSING STANDARDS

Passing score standards for licensure examinations must:

- Follow a process that adheres to accepted technical and professional standards.
- Adhere to a criterion-referenced passing score methodology that uses minimum competence at an entry level to the profession.

An arbitrary fixed passing score or percentage, such as 70%, does not represent minimally acceptable competence. Arbitrary passing scores are not legally defensible.

If a board has an appeals process for candidates who are not successful in their examination, once a criterion-referenced passing score has been determined for a multiple-choice examination, the board shall not change a candidate's score without consultation with the examination development specialist.

4. STANDARDS FOR REVIEW OF STATE AND NATIONAL EXAMINATIONS

All licensure examinations appropriated for use in California professions regulated by DCA should be validated according to accepted technical and professional standards, as described elsewhere in these provisions. At a minimum, the following factors must be considered in a review of state and national examination programs:

- Right to access information from all studies and reports from test vendors (local or national).
- Right of state agency to review recent examination.
- Description of methodology used to establish content-related validity.
- Occupational analysis report and frequency of updates.
- Method to ensure standards are set for entry level practice.
- Examination outline and method to link to the occupational analysis.
- Information about the sample of practitioners surveyed.
- Item development process (experts used, editing methods, etc.).
- Sufficient size of item banks.
- Pass-point setting methodology.
- Examination security methods; examination administration processes.
- Examination reliability.
- Pass–fail ratio.
- Statistical performance of examinations.

The suitability of an occupational analysis conducted on a national level to validate a national exam that is/could be used in California and for use in examination development in California for a California-only examination must be determined by: (1) a review of the methodology of the occupational analysis, including the demographics of the practitioners upon which it is based to ensure California practice is appropriately represented; and (2) a comparison study between a current California occupational analysis of the profession and the national occupational analysis to assess the validity of the national examination content for California practice.

Reciprocity

Reciprocity refers to the mutual recognition, endorsement, and acceptance by the State of California of licenses granted by other jurisdictions. Reciprocity agreements often include a waiver of certain California licensing requirements, such as a practice-based examination. Licensure examinations accepted in California as part of reciprocity agreements are not used for licensure in California, but individuals passing them may be qualified to practice in California without fulfilling all California licensure requirements. These examinations should be validated according to technical and professional standards to ensure that they are legally defensible. Before a licensure examination is accepted under a reciprocity

agreement, a comparison study must be performed to verify that the examination meets professional standards for validity, that the scope of practice measured by the examination is substantially similar to the California scope of practice, and that the examination is a sufficient measure of the critical competencies required for practice in California. The study should carefully evaluate differences in the scope of practice or competencies measured by the examination, and the study should determine whether waiving the California licensure examination would endanger the public. The board should consult with OPES to conduct this study.

Additional Considerations for Reciprocity

In addition to conducting a comparison study of the licensure examination, the board should evaluate the equivalency of education and experience requirements set by the jurisdiction for initial licensure within the license category requesting reciprocity. The board should set other relevant criteria, such as requiring a minimum number of years licensed and that the license must be in good standing. The board should also determine whether licensees seeking reciprocity should be required to pass a California-specific examination, e.g., a jurisprudence examination.

5. APPROPRIATE FUNDING SOURCES FOR EXAMINATION VALIDATIONS AND OCCUPATIONAL ANALYSES

Budget line items should be designated exclusively for examination development and occupational analyses projects. To assure validity, maintain consistency, preserve security, and ensure the integrity of the examination program, the budget line items need to be continuous appropriations.

Boards should budget for costs associated with examination and occupational analysis development; contracting with a computer-based testing vendor for electronic examination administration; and projecting for expenses associated with travel and per diem for SMEs who participate in examination development and occupational analysis workshops. Boards that administer examinations by paper and pencil should also consider the expense of examination proctors, including their travel and per diem expenses; examination site rental; additional security resources; and printing costs for the preparation guides and examination booklets.

Boards must have the budgetary flexibility to adapt to unexpected or additional program needs. For example, the potential for catastrophic incidents such as a security breach and the cost to replace the compromised examination should be considered in determining overall examination-related costs.

Boards contract via intra-agency contracts (IACs) with OPES for examination-related services. Currently, boards request OPES' services and submit a Budget Change Proposal (BCP) to obtain expenditure authority if they do not already have a budget line item for these expenditures. Boards are then charged, and OPES is reimbursed through the IACs for occupational

analyses, national examination reviews, and ongoing examination development, evaluation, construction, and publication services. Consulting and psychometric expertise and test scoring and item analysis (TSIA) services, among others, continue to be funded by distributed administrative costs (pro rata).

6. CONDITIONS UNDER WHICH BOARDS SHOULD USE INTERNAL AND EXTERNAL ENTITIES TO CONDUCT THESE REVIEWS

A board may choose to use external and/or internal resources for licensure examination development and/or review of state and national licensure examinations, and must determine the most logical application of those resources.

OPES is the internal resource for examination review and California-specific examination development services for DCA. OPES also conducts reviews of national examination programs to ensure compliance with California requirements.

If OPES is unable to provide the requested service, external development and review may occur. External examination development or review of a national licensure examination occurs when the board contracts with a qualified private testing firm.

7. STANDARDS FOR DETERMINING APPROPRIATE COSTS OF REVIEWS OF DIFFERENT TYPES OF EXAMINATIONS, MEASURED IN TERMS OF HOURS REQUIRED

The *Standards* provide “a basis for evaluating the quality of testing practices.” These criteria can be used to identify tasks that must be performed in the development and validation of a licensure examination. Costs are applied to the performance of each task, based on its difficulty, available technology, and the complexity of the profession.

OPES has a defined fee schedule that is based on the number of hours to complete each phase of the project. An occupational analysis and an examination development project will require different tasks to be performed; therefore, the number of hours varies from one phase to another. The time and tasks required depends on the profession, type of exam, number of forms, frequency of administration, technology resources, and other factors.

8. CONDITIONS UNDER WHICH IT IS APPROPRIATE TO FUND PERMANENT AND LIMITED-TERM POSITIONS WITHIN A BOARD TO MANAGE THESE REVIEWS

Because examinations are critical to the mandate for consumer protection, it is necessary that if a board provides an examination, it should maintain examination support staff. The number of support staff needed is determined by each board’s examination requirements and secured through the budget process.

Factors that may affect change in the number of needed staff support include, but are not limited to the following:

- An increase in the number of times an examination is offered.
- A change of method by which an examination is administered, for example:
 - From paper to computer-based testing administration.
 - From oral panel to written examination format.
 - From written-only to the addition of a practical examination.
- A change of examination administration, for example:
 - From a national to a California-based examination, or vice versa.
 - A change in examination administration vendors.
- A unique circumstance such as a breach of examination security.
- A change in legislative mandates.

B. YEARLY REPORTING REQUIREMENTS

B&P Code section 139 (c) specifies that every regulatory board shall submit to DCA on or before December 1 of each year its method for ensuring that every licensing examination is subject to periodic evaluation. These evaluations must include four components:

1. A description of the occupational analysis serving as the basis for the examination.
2. Sufficient item analysis data to permit a psychometric evaluation of the items.
3. An assessment of the appropriateness of prerequisites for admittance to the examination.
4. An estimate of the costs and personnel required to perform these functions.

B&P Code section 139 (d) states that the evaluation specified in section 139 (c) may be conducted either by the Board, Bureau, Committee, OPES, or a qualified private testing firm.

OPES compiles this information annually into a report for the appropriate fiscal, policy, and review committees of the Legislature. This report is consolidated into DCA's Annual Report.

VIOLATIONS

Validation ensures that licensing examinations are psychometrically sound, job-related, and legally defensible. Failure to follow the provisions of this policy may result in licensing persons who do not meet the minimum level of competency required for independent and safe practice, exposing California consumers and DCA's regulatory entities to considerable risk of harm by unqualified licensees.

REVISIONS

OPES is responsible for determining whether this policy needs revision; questions regarding revision should be directed to OPES at (916) 575-7240. Specific questions regarding the status or maintenance of this policy should be directed to the Division of Programs & Policy Review at DPPR@dca.ca.gov.

RELATED DOCUMENTS

Departmental Policy Memorandum “Examination Security”: OPES 22-01

Departmental Policy “Participation in Examination Workshops”: OPES 20-01

Excerpt from the March 2017 Meeting Minutes

Agenda Item 9

Presentation by Heidi Lincer, Ph.D., Chief, Office of Professional Examination Services (OPES), Department of Consumer Affairs, on completing a practice analysis and occupational analysis, and the estimated schedule and cost(s).

(This agenda item was addressed prior to agenda item 8)

Ms. Lincer stated that OPES works with the Boards and Bureaus under the DCA to assist them with their licensure examinations, in order to develop or validate a licensing examination that is fair, job-related, and legally defensible. Ms. Lincer stated that an Occupational Analysis (aka practice analysis) should be reviewed every 5-7 years to verify that it accurately describes current practice.

Executive Officer Heather Martin stated that the sample schedule she was given last year crossed over two fiscal years and could have wrapped up in October 2018. Ms. Martin stated the cost involved is a big concern as the Board does not currently have a budget line item for this; a budget change proposal (BCP) would be necessary in order to secure additional funding.

Ms. Lincer stated BCP funding is not usually a problem and after the first approval, it would become a regular line item in the budget to be addressed every 5-7 years as required.

Legal Counsel Ileana Butu clarified that the matter being discussed is a requirement of Business and Professions Code (BPC) Section 139.

Jeff Ferro asked if shortcomings are identified following the Occupational Analysis, who would be responsible for paying for the exam improvements.

Ms. Lincer stated that the Board is informed as to alternatives, if needed, and that usually the national examination vendor is willing to work with the individual state board to make the changes.

President Miller verified that it would cost approximately \$72,000 dollars for both the occupational analysis and the examination validation. Ms. Lincer confirmed.

Vice President Bookwalter asked Shawn Conway if other states have had a process like the one presented.

Mr. Conway said NBCOT has never had another state ask for this and because NBCOT is currently involved in their own practice study, NBCOT would be willing to build in a California-specific element to their practice analysis and they could forward the data to the Board.

Ms. Lincer stated that NBCOT's practice analysis would not meet the requirements of BPC Section 139 because a California based occupational analysis needed to be done, using only California based subject matter experts.

Teresa Davies commented the Board's average annual budget over the past few years was 1.3 million, and the practice analysis and examination costs would represent an approximate 5.5% increase; yet currently the licensing program and administration programs only represent 8% of the budget for each program.

Ms. Martin asked that the Board table this until June because this item was only noticed as a practice and occupational presentation.

Excerpt from the June 2017 Meeting Minutes

Agenda Item 18

Consideration and possible action on the National Board for Certification in Occupational Therapy (NBCOT) conducting a California-specific practice analysis for occupational therapists (OT) and occupational therapy assistants (OTA) as part of NBCOT's practice analysis to validate the national OT and OTA examinations.

Executive Officer Heather Martin gave an overview of events that had happened to date regarding a practice analysis: DCA's Office of Professional Examination Services (OPES) provided information regarding conducting a practice analysis at the March meeting, including a project schedule and budget projections, and NBCOT's offer to carve out California-specific data from their on-going national practice analysis and examination validation at no cost to the Board.

Discussion ensued between the Board members and Sean Conway, Senior Director, Credentialing Services, regarding timelines, the carve out of California-specific data, and what data NBCOT would make available to the Board.

Legal Counsel Ileana Butu clarified that the Board is not required to use OPES for the practice analysis. Ms. Butu stated that in the event that the Board chose to pick another option, the Board would be required to obtain bids.

Mr. Conway advised, if the Board wished for NBCOT to provide the Board with the California-specific data, that NBCOT would need a formal written request from the Board.

Public Comment

Chuck Wilmarth, Director, Health Policy and State Affairs, AOTA, stated that AOTA is opposed to the idea due to the "no cost to the Board" aspect and also expressed concern with the survey size. Mr. Wilmarth mentioned that AOTA may be interested in assisting the Board with the practice analysis, but the cost would be passed on to the Board.

President Miller stated the Board has discussed this matter several times and this was the first time the Board had heard AOTA express interest in assisting with the practice analysis; she advised AOTA the Board would be open to reviewing their outline.

Vice President Richard Bookwalter reminded the Board that all applicants for licensure are required in regulation to take and pass the NBCOT; as such, "Who better to provide data on the content of the exam, than the only entity offering the exam," he asked. Mr. Bookwalter said that he was prepared to ask NBCOT to share their California practice analysis data, if they were so willing.

Teresa Davies expressed her concern about how it would look for the Board to accept NBCOT's help free of charge and any other legalities.

Heather Kitching President, OTAC stated that OTAC agreed with AOTA and also opposed the Board accepting NBCOTs offer to provide California-specific data to the Board.

- ❖ Richard Bookwalter moved to request the California specific carve out analysis compared to national data, from NBCOT, and to provide the Board with access to the data as needed for further analysis subject to any Public Records Act requirements.
- ❖ Beata Morcos seconded the motion.

Public Comment

There was no additional public comment.

Roll Call Vote

Richard Bookwalter	Aye
Jeff Ferro	Aye
Laura Hayth	Aye
Teresa Davies	Nay
Denise Miller	Aye
Beata Morcos	Aye



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MEMORANDUM

DATE	August 2, 2017
TO	Heather Martin, Executive Officer California Board of Occupational Therapy
FROM	 Heidi Lincer, Ph.D., Chief Office of Professional Examination Services
SUBJECT	Requirements for Conducting a California Occupational Analysis

The California Board of Occupational Therapy (Board) has taken under consideration the National Board for Certification in Occupational Therapy (NBCOT) conducting a California-specific practice analysis for occupational therapists (OT) as part of NBCOT's practice analysis.¹

During the Board's March 2017 meeting, the Office of Professional Examination Services (OPES) gave a presentation explaining the requirements of Business and Professions Code section 139, and describing the occupational analysis (OA) process. OPES also explained why it did not support NBCOT conducting a California-specific OA as part of the national practice analysis. Following is a summary of the principle points:

- Business and Professions Code section 139 and OPES Validation Policy 12-01 require that all Boards conduct a California-specific OA every 5-7 years. Conducting a California-specific OA as an adjunct project at the same time as a national analysis is not consistent with professional guidelines and technical standards.
- A California-specific OA needs to be conducted using California OTs to develop the task and knowledge statements. The survey sample should be large enough to be representative of California practice and practitioner demographics. Not all California OTs are members of NBCOT, so the initial sample to be surveyed is already diluted by confining the sample to OTs with NBCOT membership.

¹Also known as an occupational or task analysis

- The results of a California-specific OA should describe the relationship and relative importance of California laws, ethics, advanced practices, continuing education requirements, telehealth, infection control and supervision requirements for entry-level practice. The NBCOT OA most likely will only focus on practice issues, rather than these other critical content areas that are often the motivation for a potential California jurisprudence examination.

An additional requirement of Business and Professions Code section 139 requires all Boards to conduct a review of their national examination and a linkage study to identify any areas of state-specific practice. A California-specific OA is required for this review. An adjunct study to a national practice analysis will not provide the required information or meet the psychometric standards as the focus of the review.

Departmental policy and State regulations are not in support of pursuing a contract with NBCOT to conduct an OA. OPES Validation Policy 12-01, Article A6, states that an external entity may be used when OPES is unable to provide the requested services. OPES is available to provide its full complement of services to the Board. In addition, the State Administration Manual, Ch. 7, 7.05, describes those standards that must be met for the contracting of personal services in lieu of using civil service personnel. It is unlikely that a contract with NBCOT would meet all of the requirements.

Furthermore, if NBCOT offers to complete the California OA project free of charge, the Board needs to consider the motivation behind such an offer. Nevertheless, for the reasons described above, the results of the analysis would most likely not meet psychometric guidelines and Business and Professions Code section 139 requirements.

OPES recommends that the Board document its intent (e.g., as a strategic plan item) to have OPES conduct an OA and a review of the national examination, and that the Board initiates the process to secure the funding through a budget change proposal (BCP). In recent years, the majority of DCA BCP requests for OAs have been approved.

In closing, OPES is prepared to assist the Board in meeting its obligations with regards to complying with Business and Professions Code section 139 requirements and departmental policy, including providing language for the BCP. OPES has attached updated cost estimates and proposed project plans for the OA and national examination review, with the OA beginning in September 2019.

If you have any questions about this memo, please contact me at 916-575-7240.

cc: Tracy Montez, Ph.D., Chief
Division of Programs and Policy Review

Attachments:

Intra-agency contract agreement draft cost estimate and project plan for OPES occupational analysis, fiscal year 2019-20

Intra-agency contract agreement draft cost estimate and project plan for OPES review of national examination and linkage study, fiscal year 2020/21

AGENDA ITEM 15

LEGISLATIVE UPDATE.

INCLUDES THE FOLLOWING:

- 15.1 LEGISLATION UPDATE TABLE.
- 15.2 ASSEMBLY BILL (AB) 346 (NGUYEN) IN-HOME SUPPORTIVE SERVICES: LICENSED HEALTH CARE PROFESSIONAL CERTIFICATION – AMENDED.
- 15.3 AB 348 (KRELL) FULL-SERVICE PARTNERSHIPS – CHAPTERED.
- 15.4 AB 485 (ORTEGA) LABOR COMMISSIONER: UNSATISFIED JUDGEMENTS: NONPAYMENT OF WAGES – AMENDED.
- 15.5 AB 489 (BONTA) HEALTH CARE PROFESSIONS: DECEPTIVE TERMS OR LETTERS: ARTIFICIAL INTELLIGENCE – CHAPTERED.
- 15.6 AB 667 (SOLACHE) PROFESSIONS AND VOCATIONS: LICENSE EXAMINATIONS: INTERPRETERS – AMENDED
- 15.7 AB 742 (ELHAWARY) DEPT. OF CONSUMER AFFAIRS: LICENSING: APPLICANTS WHO ARE DESCENDANTS OF SLAVES – AMENDED.
- 15.8 AB 951 (TA) HEALTH CARE COVERAGE: BEHAVIORAL DIAGNOSES – CHAPTERED.
- 15.9 AB 1009 (RUBIO) TEACHER CREDENTIALING: ADMINISTRATIVE SERVICES CREDENTIAL: OCCUPATIONAL AND PHYSICAL THERAPISTS – CHAPTERED.
- 15.10 SB 470 (LAIRD) BAGLEY-KEENE OPEN MEETING ACT: TELECONFERENCING – CHAPTERED.
- 15.11 SB 641 (ASHBY) DEPT. OF CONSUMER AFFAIRS AND DEPT. OF REAL ESTATE: STATES OF EMERGENCY: WAIVERS AND EXEMPTIONS – AMENDED.

Please Note: All bills can be found at:

<https://leginfo.legislature.ca.gov>

California Board of Occupational Therapy

Legislative Update as of October 28, 2025

Bill #	Author	Summary	Board Position/ Date Taken	Status
AB 277	Alanis	Behavioral health centers, facilities, and programs: background checks. This bill would require a person who provides behavioral health treatment for a behavioral health center, facility, or program to undergo a background check, as specified.	Watch – June 2025	5.01.25 - Hearing cancelled at request of author.
AB 346	Nguyen	In-home supportive services: licensed health care professional certification. This bill would instead define “licensed health care professional” for those purposes to mean any person who engages in acts that are the subject of licensure or regulation under specified provisions of the Business and Professions Code or under any initiative act referred to in those specified provisions. The bill would also clarify that as a condition of receiving paramedical services, an applicant or recipient is required to obtain a certification from a licensed health care professional, as specified.	Watch – June 2025	7.09.25 – Amended in Senate 8.29.25 – In Committee: Held under submission.
AB 348	Krell	Full service partnerships. This bill would establish criteria for an individual with a serious mental illness to be presumptively eligible for a full-service partnership, including, among other things, the person is transitioning to the community after 6 months or more in the state prison or county jail. The bill would specify that a county is not required to enroll an individual who meets that presumptive eligibility criteria if doing so would exceed full-service partnership funding.	Watch – June 2025	9.04.25 - Senate amendments occurred in. 10.13.25 - Chaptered by Secretary of State

AB 479	Tangipa	Criminal procedure: vacatur relief. Existing law allows a person who was arrested or convicted of a nonviolent offense while they were a victim of intimate partner violence, or sexual violence, to petition the court, under penalty of perjury, for vacatur relief. This bill would require the court, before it may vacate the conviction, to make findings regarding the impact on the public health, safety, and welfare, if the petitioner holds a license, as defined, and the offense is substantially related to the qualifications, functions, or duties of a licensee. The bill would require a petitioner who holds a license to serve the petition and supporting documentation on the applicable licensing entity and would give the licensing entity 45 days to respond to the petition for relief.	Watch – June 2025	03.26.2025 – Hearing cancelled at request of author.
AB 485	Ortega	Labor Commissioner: unsatisfied judgments: nonpayment of wages. This bill would require state agencies, including boards and bureaus, to deny a new license or permit, or the renewal of an existing license or permit, for employers that have outstanding wage theft judgments and have not obtained a surety bond or reached an accord with the affected employee to satisfy the judgment. The Labor Commissioner would notify applicable boards and bureaus.	Watch – June 2025	7.01.25 – Amended in Senate. 8.29.25 – In committee. Held under submission.
AB 489	Bonta	Health care professions: deceptive terms or letters: artificial intelligence. This bill would make provisions of law that prohibit the use of specified terms, letters, or phrases to falsely indicate or imply possession of a license or certificate to practice a health care profession, as defined, enforceable against an entity who develops or deploys artificial intelligence technology that uses one or more of those terms, letters, or phrases in its advertising or functionality. The bill would prohibit the use by AI or GenAI technology of certain terms, letters, or phrases that indicate or imply that the advice or care being provided through AI is being provided by a natural person with the appropriated health care license or certificate. This bill would make a violation of these provisions subject to the jurisdiction of the appropriate health care profession board, and would make each use of a prohibited term, letter, or phrase punishable as a separate violation.	Watch – June 2025	9.08.25 – Senate amendments concurred in. 10.11.25 – Chaptered by Secretary of State.

AB 667	Solache	Professions and vocations: license examinations: interpreters. This bill would, beginning January 1, 2027, require the State Department of Public Health and boards under the jurisdiction of the Department of Consumer Affairs to permit an applicant who cannot read, speak, or write in English to use an interpreter, at no cost to the applicant, to interpret the English verbal and oral portions of the license or certification examination, as applicable, if the applicant meets all other requirements for licensure.	Watch – June 2025	9.05.25 - Amended in Senate. 9.11.25 – Ordered to inactive file by request of Sen. Durazo
AB 742	Elhawary	Department of Consumer Affairs: licensing: applicants who are descendants of slaves. This bill would DCA boards to expedite applications for applicants seeking licensure who are descendants of American slaves once a process to certify descendants of American slaves is, especially applicants who are descended from a person enslaved within the United States. Existing law requires those boards to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and supplies evidence that they are married to or in a domestic partnership or other legal union with an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.	Watch – June 2025	9.09.25 – Read third time. Passed. 10.13.25 – Consideration of Governor’s veto pending.
AB 951	Ta	Health care coverage: behavioral diagnoses. This bill would prohibit a health care service plan contract or health insurance policy issued, amended, or renewed on or after January 1, 2026, from requiring an enrollee or insured previously diagnosed with pervasive developmental disorder or autism to receive a rediagnosis to maintain coverage for behavioral health treatment for their condition. The bill would require a treatment plan to be made available to the plan or insurer upon request.	Watch – June 2025	7.30.25 – Approved by Governor. 7.30.25 – Chaptered by Secretary of State
AB 1009	Rubio	Teacher credentialing: administrative services credential: occupational and physical therapists. This bill would provide that the possession of a valid license to practice occupational therapy or physical therapy, as specified, may be used to satisfy the above-described credential requirement, but a preliminary services credential issued to an individual based, in part, on one of	Support – March 2025	10.11.25 – Chaptered by Secretary of State.

		those licenses would not authorize the supervision or evaluation of teachers, except under specified circumstances. The bill would increase the required minimum experience for this credential to 5 years and would add experience as a school-based occupational therapist or physical therapist as a means to satisfy that requirement, but would authorize a school district, county office of education, or charter school to request a waiver of up to 2 years of that experience for a candidate who meets specified criteria.		
SB 470	Laird	Bagley-Keene Open Meeting Act: teleconferencing. Extends certain provision of the Open Meetings Act until January 1, 2030.	Watch – June 2025	9.08.25 – In Senate. Ordered to engrossing and enrolling. 10.01.25 – Chaptered by Secretary of State.
SB 641	Ashby	Department of Consumer Affairs and Department of Real Estate: states of emergency: waivers and exemptions. This bill would authorize the Department of Real Estate and boards under the jurisdiction of the Department of Consumer Affairs to waive the application of certain provisions of the licensure requirements that the board or department is charged with enforcing for licensees and applicants <i>who reside in or whose primary place of business is in a location damaged by a natural disaster for which a state of emergency is proclaimed by the Governor, as specified, or for which an emergency or major disaster is declared by the President of the United States</i>, including certain examination, fee, and continuing education requirements. <i>The bill would require a board to notify the director of the Department of Consumer Affairs in writing of any waiver approved by that board and would prohibit the waiver from taking effect for a period of 5 business days after the director receives the notification from the board. The bill would authorize the director to approve or disapprove a waiver within the 5 business days described above and require the director to notify the board of any decision to approve or disapprove a waiver within those 5 business days. The bill will prohibit a waiver from taking effect if the director disapproves the waiver, and require a waiver that is approved by the director, or that fails to be approved or disapproved by the director within the 5 business days described above, to take effect the following day. The bill would require the Department of</i>	Watch – June 2025	9.04.25 – Ordered a third reading. 9.23.25 – Enrolled and presented to Governor. 10.13.25 – In Senate. Consideration of Governor’s veto pending.

		<i>Consumer Affairs to, among other things, post each waiver that takes effect on its website.</i>		
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AGENDA ITEM 16

REGULATORY UPDATE ON THE STATUS OF CURRENT PACKAGES.

REGULATIONS UPDATE REPORT

Pending Rulemaking files: In-Process

Rulemaking File Section and Subject	Status	Date First Submitted for approval		Current Status	Date Text to be Published by OAL
		Legal	Budget		
Fee Increase <i>Amend Section:</i> 4130	Text approved by Board 6/2025	9/16/25	9/16/25	10/22/25 – Approved by the Budget Office 10/23/25 – Approved by Legal	
Cost Recovery <i>Amend Section:</i> 4147	Board to vote 11/2025			President requests motion on Proposed Regulatory Language	
Addresses. Advanced Practice, Continuing Competency <i>Amend Sections:</i> 4102, 4150, 4151, 4152, 4153, 4154, 4161, 4162	Text approved by Board 8/2023 & 11/2023	08/30/23	08/30/23	Fourth round of edits requested from Legal and Budget 1/23/25. Board staff to discuss requested edits with Legal and Budget, then resubmit.	
Enforcement Overhaul Amend Sections: 4101, 4141, 4146, 4146.5, 4147, 4147.5, 4149.1 Add Sections: 4146.1, 4146.7, 4146.8, 4147.7, 4149.6, 4149.7	Text approved by Board 8/2023	TBD	TBD	Currently being reexamined for submission in smaller sections.	

REGULATIONS UPDATE REPORT

Pending Rulemaking files: Process Not Yet Started

Rulemaking File Subject	Section(s)	Priority	Status	Comments
Application/Renewal Attestation	4110.1 4122	2	Text approved by the Board August 2022. Rulemaking file to be completed and submitted to DCA.	Text would implement BPC 2570.6 and 2570.10
Definitions Supervision Parameters	4180 4181	1	Text approved by the Board November 2024. Rulemaking file to be completed and submitted to DCA.	Text would implement BPC 2570.13
Hand Therapy Physical Agent Modalities Application for Approval in Advanced Practice Areas	4151 4152 4155	3	Text approved by the Board March 2025 and June 2025. Will submit a rulemaking file once Board has adopted language for 4153.	
Text for OTs to request to supervise more than three OTAs	TBD	4	Practice Committee to review and provide recommendations to the Board.	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	5	Practice Committee to review and provide recommendations to the Board.	Text provides specificity to Text in BPC 2570.18.5

Notes:

OAL approved the regulatory action relating to the procedures for submission of applications for licenses and limited permits on June 16, 2025. This regulatory action became effective on 10/1/2025.