

BACKGROUND PAPER FOR THE BOARD OF OCCUPATIONAL THERAPY

Joint Oversight Hearing, March 19, 2013

**Senate Committee on Business, Professions and Economic
Development
and
Assembly Committee on Business, Professions and Consumer
Protection**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS FOR THE BOARD OF OCCUPATIONAL THERAPY

BRIEF OVERVIEW OF THE BOARD OF OCCUPATIONAL THERAPY

Function of the Board of Occupational Therapy

The occupational therapy profession was established in 1917 and is one of the oldest allied health professions in the United States. The occupational therapy profession in California was regulated by a title act dating back to 1977 that prohibited individuals from using the professional titles “occupational therapist” and “occupational therapy assistant” without appropriate professional training. The title act was amended in 1993 to clarify the education and examination requirements that practitioners needed to satisfy. The prior law did not mandate any state registration process, nor did it prevent an unqualified individual from practicing occupational therapy as long as the individual did not refer to himself or herself using the professional titles quoted above.

Senate Bill 1046 (Murray, Chapter 697, Statutes of 2000) established the California Board of Occupational Therapy (Board). The Board became operable in 2001 and remains responsible for the licensure and regulation of Occupational Therapists (OTs) and Occupational Therapy Assistants (OTAs) in California.

The current Board vision statement, as stated in its 2011 Strategic Plan, is as follows:

The California Board of Occupational Therapy is a model organization for occupational therapy state regulatory Boards, ensuring consumer protection and quality occupational therapy.

The current Board mission statement, as stated in its 2011 Strategic Plan, is as follows:

The mission of the California Board of Occupational Therapy is to regulate occupational therapy by serving and protecting California's consumers and licensees.

Occupational therapy licensees provide important health and rehabilitation services to people of all ages who, because of illness, injury, or developmental or psychological impairment, need specialized interventions to regain, develop, or build the skills necessary for independent functioning.

The focus of occupational therapy is on an individual's ability to effectively engage in performance areas that are purposeful and meaningful, such as activities of daily living (ADLs) including work, play, leisure, social participation, and other productive activities.

OTs and OTAs treat the following:

1. Body functions
 - a. neuromusculoskeletal
 - b. sensory-perceptual
 - c. visual
 - d. mental
 - e. cognitive
 - f. pain factors
2. Body structures
 - a. cardiovascular
 - b. digestive
 - c. nervous
 - d. integumentary
 - e. genitourinary systems
 - f. structures related to movement
3. Habits, routines, roles, rituals, and behavior patterns
4. Physical and social environments, cultural, personal, temporal, and virtual contexts and activity demands that affect performance
5. Performance skills
 - a. motor and praxis
 - b. sensory-perceptual
 - c. emotional regulation
 - d. cognitive

- e. communication
- f. social skills

The Board consists of seven members, five appointed by the governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee. The board is comprised of three OTs, one OTA and three public members. The Board is required to meet at least three times a year, in Sacramento, Los Angeles, and San Francisco. All meetings are subject to the Bagley-Keene Open Meetings Act.

The following table lists all members of the Board including background on each member, appointment date, term expiration date, and appointing authority.

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
<p>Kathay Lovell (public member) has served on the South Lake Tahoe City Council from 2002 to 2010 and was the former mayor for a third term from 2009 to 2010. Lovell was a business and government sales account executive for Verizon Wireless from 2000 to 2005 and for Volcano Communications from 1999 to 2000. She was business operations manager for TCI Cable from 1994 to 1998, telecommunications supervisor for Lake Tahoe Horizon Cason/Hotel in 1994 and telecommunications manager and VIP guest manager from 1983 to 1994.</p>	12/31/2010	12/31/2014	Governor
<p>Linda Florey, OT (professional member) has worked for the University of California, Los Angeles' Resnick Neuropsychiatric Hospital as chief of rehabilitation services since 1992 and previously as associate chief from 1969 to 1992 and staff occupational therapist from 1968 to 1969. Florey was a staff occupational therapist at Michael Rees Hospital from 1964 to 1966. Ms. Florey has served in a variety of faculty and instructor positions from 1971 to present, including Clinical Associate Professor in Occupational Therapy, University of Southern California, and Clinical Assistant Professor Occupational Therapy, State University of New York at Buffalo. She is a member of the American Occupational Therapy Association and Occupational Therapy Association of California and is president of the California Foundation of Occupational Therapy. Ms. Florey holds a Ph.D. in Occupational Science, University of Southern California, a MA in Occupational Therapy, University of Southern California, and a BA in Occupational Therapy, State University of Iowa.</p>	7/14/2010	12/31/2014	Governor
<p>Luella Grandgaard, OT (professional member) was reappointed to the Board where she previously served from 2001 to 2007. She has worked at Eisenhower Medical Center since 1987. Ms. Grangaard has served as the manager of occupational therapy from 1992 to present and served as staff occupational therapist from 1987 to 1992. She served as staff occupational therapist at Angel View Children's Habilitation Center from 1983 to 1987. Additionally, from 1993 to 2001, Ms. Grangaard served as contract faculty at Loma Linda University, Department of Occupational Therapy. Ms. Grangaard previously served as the California Representative to the Representative Assembly of the American</p>	12/13/2010	12/31/2012	Governor

Occupational Therapy Association from July 2006 to June 2012. She is a member of the American Occupational Therapy Association, the California Occupational Therapy Association and the American Society of Hand Therapists. Ms. Grangaard holds a MS in Occupational Therapy, University of Puget Sound and BS in Psychology, Colorado State University.			
Nancy Michel (public member) retired from the California State Senate Rules Committee in 1998. She was Staff Director of Appointments for the Senate Rules Committee from 1982 to 1998.	4/5/2006	12/31/2012	Senate Rules Committee
Vacant, OT (professional member)			Governor
Vacant, OTA (professional member)			Governor
Vacant (public member)			Speaker of the Assembly

The Board is not required in statute to establish committees. However, the Board has organized several committees which serve as an essential component to help the Board deal with specific policy and/or administrative issues. The committees research policy issues and concerns referred by the Board staff, the public, or licensees.

The following is a list of committees that have been established by the Board:

- **Administrative Committee** – The purpose of the Administrative Committee is to provide guidance to staff for the budgeting and organizational components of the Board, e.g., budget change proposals, out-of-state trip requests, contracts, meeting agendas and preparation, sunset review, and related projects; to provide suggestions regarding the Board’s Strategic Plan; and to respond to items identified in an internal audit and other duties as required.
- **Education and Outreach Committee** – This committee was created to develop consumer and licensee outreach projects including the Board’s newsletter, website, e-government initiatives, and outside organization presentations.

Pursuant to the Board’s Administrative Manual, committee members may also be asked to represent the Board at meetings, conferences, health, career or job fairs, or at the invitation of outside organizations and programs.

- **Enforcement Committee** – This committee was created to seek ways to improve the Board’s enforcement activities, develop and review enforcement policies, review enforcement and discipline-related regulatory proposals, review enforcement and discipline-related forms, review and make recommendations regarding the Board’s disciplinary guidelines, and assist in identifying situations wherein enforcement procedures might be improved.

- **Disaster Preparedness/Response Committee** – This committee was created to identify and provide input into reducing barriers to occupational therapy roles in disaster preparedness and disaster response, review the current laws and regulations to ensure consistency, be responsible for the development and maintenance of the Board’s Disaster Response plan, and provide input into annual updates of the Board’s Continuity of Operations and Continuation of Government report.
- **Legislative and Regulatory Affairs Committee** – This committee was created to provide information and/or make recommendations to the Board and/or its committees on matters relating to legislation and regulations affecting the regulation of OTs, OTAs, and other items in the public interest or affecting Board operations.
- **Practice Committee** – This committee was created to review and provide recommendations to staff on Applications to Provide Advanced Practice Post-Professional Education (course applications); review and provide recommended responses to the Board on various practice issues/questions submitted by licensees and consumers; provide guidance to 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.

At its October 11, 2012 meeting, the Board adopted the committee’s recommendation that the committee no longer review advanced practice applications or Applications to Provide Advanced Practice Post-Professional Education submitted by providers. The committee membership as a whole does not possess the skill set to do so and the Board now has the ability to contract with consultants to provide these reviews.

The profession of Occupational Therapy is represented by the Occupational Therapy Association of California, Inc. (OTAC). OTAC represents the professional interest of the licensees in California, provides information about the practice of occupational therapy to new licensees entering the state, and provides other resources to support the profession. The American Occupational Therapy Association, Inc. (AOTA) is the organization that represents the profession on a national level and provides resources to support consumers, the profession, and the educational community.

(For more detailed information regarding the responsibilities, operation, and functions of the Board please refer to the Board’s *2012 Oversight Report*)

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The Board was last reviewed in 2005 by the Joint Commission on Boards, Commission, and Consumer Protection (JCBCCP). During the previous sunset review, the JCBCCP raised 7 issues and included a set of recommendations to address those issues. Below, are actions which the Board and Legislature addressed over the past 8 years. Those which were not addressed and which may still be of concern to this Committee are addressed more fully under the “Current Sunset Review Issues” section.

In November, 2012, the Board submitted its required sunset report to this Committee. In the report, the Board described actions it has taken since its prior review to address the recommendations of the JCBCCP. According to the Board, the following are some of the more important programmatic and operational changes, enhancements, and other important policy decisions or regulatory changes made:

Budget Surplus and License Renewal Period

During the 2005 Sunset Review hearing, the JCBCCP inquired about the Board’s budget surplus and the need to change the license renewal period from annual to biennial. The Board responded by changing the license renewal period from annual to biennial. This helped address the Board’s revenue level and provided the licensing population greater flexibility with its continuing education requirements.

Out of State Licensees

During the 2005 Sunset Review hearing, the JCBCCP questioned the Board regarding their policy for licensure exemption for OT practitioners who were licensed in another state. At the time, the Board was allowing out of state OT practitioners, who were in the process of applying for licensure in California, to work in California for up to 45 days. The JCBCCP recommended that the policy be revised to instead require out of state OT practitioners to apply for licensure in California and allow them to practice for up to 60 days while the application is being processed.

The Board noted in its recent report that the policy has been changed. Currently, an applicant who possesses a current, active, and non-restricted license to practice occupational therapy under the laws of another state that the Board determines has licensure requirements, at least as stringent as the requirements of the Optometry Practice Act, may practice for up to 60 days during the period the application is being processed.

Advanced Practice

When the Board was first established, there were no national minimum education standards required by occupational therapy education programs relating to the areas of swallowing assessment, evaluation, or intervention, the use of physical agent modalities, or hand therapy. Thus, these practice areas were identified as “advanced practice” since the practice areas were

considered beyond the skills of a new graduate. Therefore, additional post-graduate requirements were established. Additionally, according to the Board, stakeholders who supported the advent of advanced practice guidelines believed "...these areas of practice would be high-risk with potential for harm."

In response to the advanced practice guidelines, the JCBCCP raised a number of questions for the Board:

1. If the standards developed by the Accreditation Council for Occupational Therapy Education (ACOTE) allow for inconsistency between degree programs, does this indicate the Board should be concerned with the quality of education outside of the three advanced practice areas?
2. What percentage of schools are adequately training students in hand therapy, physical agent modalities and swallowing in their current programs?
3. If ACOTE standards changed sufficiently to allow all future licensees to practice in hand therapy, swallowing or physical agent modalities, how would the Board handle existing licensees?
4. Would advanced practice certifications still need to be given to practitioners who were educated under the old standards?
5. What is wrong with using advanced practice certifications?
6. How do other states handle this issue?
7. How common is the need to use these three advanced practice techniques in the field of occupational therapy?

The Board responded in its 2012 report that all entry-level occupational therapy programs nationwide are required to meet standards in the occupational therapy curriculum including minimum education in the areas of swallowing assessment, evaluation, or intervention, and the use of physical agent modalities.

Strategic Plan

The Board updated its Strategic Plan in 2005, 2007, and 2011. While the changes to the strategic plan from 2005 to 2007 were minimal, the changes in the strategic planning process and the resulting improvements in the 2011 strategic plan were more substantive.

The Board's *core values* were bolstered and some values were enhanced and re-worded:

The California Board of Occupational Therapy will strive for the highest possible quality throughout all of its programs making it a progressive and responsive organization by:

1. *Providing excellent customer service to consumers, licensees, employers and other stakeholders.*
2. *Promoting, applying, and enforcing ethical standards of occupational therapy.*
3. *Implement fair and consistent application of the laws and regulations governing occupational therapy.*

4. *Recognizing and supporting the diverse practice settings and roles in occupational therapy.*
5. *Encouraging active participation by stakeholders through access to the Board.*
6. *Ensuring a high level of professionalism, efficiency, and effectiveness by the Board members and staff.*

Previously, the Board's *goals and objectives* were too numerous and vaguely worded. Thus, the Board's goals and objectives were reduced in number. Decreasing the number of goals and objectives was not only an improvement in narrowing the focus of the Board's priorities, but the wording was refined and bolstered to ensure better direction to Board staff, thereby ensuring more efficiency and effectiveness in accomplishing the Board's goals and priorities.

Legislation Sponsored by or Affecting the Board

There have been amendments to the licensing laws that have enhanced the Board's ability to protect the consumer, such as development of the Disciplinary Guidelines and Cite and Fine Authority. To further bolster the regulation of the profession, the Board established supervision requirements, advance practice requirements, minimum standards for infection control, and continuing education/competency requirements.

- SB 1046 (Murray, Chapter 697, Statutes of 2000) created the Board of Occupational Therapy and established an inoperative date of July 1, 2006 and a sunset date of January 1, 2007.
- SB 136 (Figueroa, Chapter 909, Statutes of 2004) changed the inoperative date of the Board of Occupational Therapy from July 1, 2006, to July 1, 2007, and the sunset date from January 1, 2007 to January 1, 2008.
- SB 1476 (Figueroa, Chapter 658, Statutes of 2006) changed the inoperative date of the Board of Occupational Therapy from July 1, 2007 to July 1, 2013 and the sunset date from January 1, 2008 to January 1, 2014.

Since the Board's last sunset review in 2005, a number of bills relevant to the Board's duties have been considered and enacted. The relevant legislation is listed below in chronological order.

- SB 1476 (Figueroa, Chapter 658, Statutes of 2006) Extended the sunset date of the Board to January 1, 2014. In addition, this bill changed the process for out-of-state licensees practice privileges in California. This bill allows out-of-state licensees' to practice in California for up to 60 days if an application for licensure or certification is filed, their current license is up to the same standards of the Board, and if the services are performed with a California licensed occupational therapist.

- SB 1852 (Committee on Judiciary, Chapter 538, Statutes of 2006) was a code maintenance bill. The changes were non-substantive in nature.
- SB 1048 (Committee on Business, Professions, and Economic Development, Chapter 588, Statutes of 2007) clarified that the required examination for licensure or certification is the exam administered by the National Board for Certification in Occupational Therapy or by another nationally recognized credentialing body. The bill also added language specifying that the Board must keep information relevant to licensure, including issuance and expiration dates, up-to-date on its Internet website.
- SB 819 (Yee, Chapter 308, Statutes of 2009) made numerous technical changes and added a new section specifying that if a licensee is aware that another licensee or applicant is in violation of the practice act, that knowledge must be reported to the Board in writing and that licensee must cooperate with and assist the Board as required.
- SB 821 (Committee on Business, Professions, and Economic Development, Chapter 307, Statutes of 2009) made a number of technical changes throughout the Board's Practice Act. In addition, the bill updated a number of provisions including clarifying that an occupational therapy assistant can supervise an aide in client-related tasks. The bill added new language creating a retired licensure category for occupational therapists and occupational therapy assistants.
- SB 294 (Negrete Mcleod, Chapter 695, Statutes of 2010) made technical changes to the Board's Practice Act to extend the sunset date from 2013 to 2014.
- SB 999 (Walters, Chapter 173, Statutes of 2010) made technical changes to Board's Practice Act to clarify that public members cannot be a licensee of any other healing arts Board and repealed obsolete language regarding a General Fund start-up loan.
- SB 1111 (Negrete Mcleod, Died, 2010) and SB 544 (Price, Died, 2011) These bills both proposed to increase enforcement capabilities of the various Boards under the Department of Consumer Affairs, including the CBOT. Both bills subsequently failed passage, but the Boards were directed to implement, in regulation, those provisions which were deemed critical under their current statutory authority. The Board's regulations to implement these provisions took effect on September 28, 2012.
- AB 415 (Logue, Chapter 547, Statutes of 2011) provided that health care providers under Division 2 of the Business and Professions Code have the authority to administer health care services via telehealth. The Board is in the

process of promulgating regulations specific to occupational therapy to implement this bill.

Adopted and Pending Regulations

Since the Board's last sunset review in 2005, a number of regulations relevant to the Board's duties have been considered and enacted. The adopted and pending regulations are listed in the table below.

Section	Title	Status
4120	Renewal of License or Certificate	Operative 11/15/2006
4121	Renewal of Expired License or Certificate; Application; Fees; Effective Date of Renewal	Operative 11/15/2006
4130	Fees	Operative 11/08/2006
4161	Continuing Competency	Operative 11/15/2006
4162	Completion and Reporting Requirements	Operative 11/15/2006
4114	Abandonment of Application	Operative 08/09/2007
4152.1	Use of Topical Medications	Operative 08/02/2007
4123	Limited Permit	Operative 05/10/2008
4141	Assessment of Administrative Fines	Operative 06/20/2008
4110	Application	Operative 08/27/2008
4161	Continuing Competency	Operative 09/06/2008
4154	Post Professional Education and Training	Operative 10/22/2008
4155	Application for Approval in Advanced Practice Areas	Operative 10/22/2008
4170	Ethical Standards of Practice	Operative 01/16/2009
4181	Supervision Parameters	Operative 04/03/2009
4161	Continuing Competency	Operative 09/23/2009
4130	Fees	Operative 08/26/2009
4120	Renewal of License or Certificate	Operative 03/26/2010
4100	Definitions	Operative 04/07/2010
4123	Limited Permit	Operative 04/13/2011
4125	Representation	Operative 04/13/2011
4175	Minimum Standards for Infection Control	Operative 06/30/2010
4180	Definitions (relating to supervision)	Operative 07/03/2010
4150	Definitions (relating to advanced practice)	Operative 05/28/2011
4151	Hand Therapy	Operative 05/28/2011
4152.1	Use of Topical Medications	Operative 05/28/2011
4153	Swallowing Assessment, Evaluation, or Intervention	Operative 05/28/2011
4154	Post Professional Education and Training	Operative 05/28/2011
4155	Application for Approval in Advanced Practice Areas	Operative 05/28/2011

4147	Disciplinary Guidelines (former Section 4144)	Operative 07/06/2011
4141	Assessment of Administrative Fines	Operative 08/19/2011
4145	Record Retention	Operative 08/19/2011
4155	Application for Approval in Advanced Practice Areas	Operative 04/18/2012
4100	Definitions	Operative 09/28/2012
4101	Delegation of Certain Functions.	Operative 09/28/2012
4146	Definitions (relating to discipline)	Operative 09/28/2012
4148	Mental or Physical Examination of Fitness for Licensure	Operative 09/28/2012
4149	Other Actions Constituting Unprofessional Conduct	Operative 09/28/2012
4149.1	Revocation for Sexual Contact	Operative 09/28/2012
4116	Definitions (relating to sponsored free health care events)	Operative 09/10/2012
4117	Sponsoring Entity Registration and Recordkeeping Requirements	Operative 09/10/2012
4118	Out of State Practitioner Authorization to Participate in Sponsored Event	Operative 09/10/2012
4119	Termination of Authorization and Appeal	Operative 09/10/2012
4127	Inactive Status (former Section 4122)	<i>Pending</i>
4128	Retired Status	<i>Pending</i>
4130	Fees	<i>Pending</i>
4154	Post Professional Education and Training	<i>Pending</i>
4170	Ethical Standards of Practice	<i>Pending</i>
4172	Standards of Practice for Telehealth	<i>Pending</i>
4101	Delegation of Certain Functions	<i>Pending</i>
4171	Notice to Consumer	<i>Pending</i>
4147	Disciplinary Guidelines	<i>Pending</i>
4180	Definitions (relating to supervision)	<i>Pending</i>
4184	Delegation of Tasks to Aides	<i>Pending</i>
4187	Occupational Therapy Assistants Serving in Administrative Positions	<i>Pending</i>

CURRENT SUNSET REVIEW ISSUES

The following are areas of concern for the Board to consider along with background information regarding the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and are asked to respond to both the issues identified and the recommendations of the Committee staff.

USE OF TECHNOLOGY

ISSUE # 1: Webcasting meetings.

Background: In its 2012 report to the Legislature, the Board reported it "...has only webcast a few of its meetings; however it plans to take advantage of this service more often beginning in 2012."

The Committee is concerned about the Board's lack of use of technology in order to make the content of the Board meetings more available to the public. Webcasting is an important tool that can allow remote members of the public to stay apprised of the activities of the Board as well as well as trends in the profession.

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

CUSTOMER SATISFACTION

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

Background: In order to ensure that licensees and other members of the public have a venue to report satisfaction or dissatisfaction with the Board, the Board includes a Customer Satisfaction Survey on its website. In its recent report to the Legislature, the Board included data from the survey spanning July of 2010 to June of 2012.

The Committee notes that over 50% of the respondents indicated they did not receive the assistance they needed after contacting the Board. Further, they rated their interactions with the Board in the "needs improvement" and "poor/unsatisfactory" categories.

Question: Did you receive service/assistance you needed as result of your contact?		
	Response Count	Response %
Yes	14	43.8
No	18	56.3
<i>Skipped question</i>	4	

Question: If you answered YES to “Have you interacted with any other state licensing/regulatory Board/agency” please rate our Board:		
	Response Count	Response %
Excellent	3	23.1%
Good	2	15.4%
Neutral	1	7.7%
Needs Improvement	4	30.8%
Poor/Unsatisfactory	3	23.1%
<i>Skipped question</i>	23	

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

ENFORCEMENT

ISSUE # 3: Publishing Citations.

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

Currently, 22 other licensing entities under DCA post both citations and disciplinary action on the licensee’s record in WLL, 16 licensing entities post the information on the discipline webpage, and 9 share the information via a newsletter email.

The Committee desires that all licensing entities provide the public and current/prospective employers with both citation and disciplinary action information in the most transparent and accessible manner possible.

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

ISSUE # 4: Continuous Query.

Background: “Continuous Query” is a service that monitors enrolled licensees for adverse actions and medical malpractice payment history 24 hours a day/365 days per year for a one time enrollment fee which is then subject to annual renewal. This important tool assists the Board by facilitating the review of an applicant’s past disciplinary actions as well as ensuring the Board is notified of any future disciplinary actions taken against the licensee by another reporting entity.

The Board utilizes the Continuous Query function for applicants as well as licensees placed on probation. When initially enrolled, the Board receives a comprehensive history of disciplinary actions taken against the applicant or licensee and then continues to receive e-mail notifications within 24 hours of either databank receiving a report from a reporting entity, subject to continued enrollment or annual renewal.

While the Board currently bears the \$6.50 cost of querying the databanks, the Board had been optimistic that SB 544 would have passed and addressed the financial impact to this important consumer protection tool.

SB 544 would have required all health care licensing board(s) to query the NPDB before granting a license to an applicant and before granting a petition for reinstatement of a revoked or surrendered license. This bill would also have allowed the Board to charge the applicant a fee to cover the Board’s actual cost of the query, allowing the Board to check all applicants. SB 544 died in committee.

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

The Committee is curious about the Board’s plan to continue purchasing the continuous query for each applicant considering the financial constraints and failed passage of SB 544.

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

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

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

Some boards require completion of a jurisprudence examination and others require completion of continuing education in ethics. The Board would like to examine a combination of requiring a jurisprudence examination and completion of an ethics continuing education requirement(s). The Board believes that requiring completion of ethics course(s) and requiring applicants and/or licensees to demonstrate an understanding of California statutory and regulatory requirements may minimize enforcement activity involving ethical violations.

The Committee is concerned about the high number of complaints relating to practice issues.

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

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

Background: Each of the licensing boards within the Department of Consumer Affairs has the protection of the public as its stated priority in the law. Its disciplinary decisions must always place the protection of the public as its top priority. As such, boards establish disciplinary guidelines for specific violations and adopt them through their regulatory process. Boards have the authority to resolve a disciplinary matter through negotiated settlement, typically referred to as a “stipulated settlement.” A stipulated settlement may be pursued in place of holding a lengthy administrative hearing on a disciplinary matter.

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

The Citizen Advocacy Center, a national organization focusing on licensing regulatory issues nationwide, notes: “It is not uncommon for licensing boards to negotiate consent orders [stipulated settlements] 80% of the time or more.”

In its recent report to the Committee, the Board indicated that 24 of the 44 (54%) disciplinary actions have been resolved through stipulated settlement.

Enforcement Statistics			
	FY 2009/10	FY 2010/11	FY 2011/12
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions	7	5	8
Stipulations	12	6	6
Average Days to Complete	746	740	637
AG Cases Initiated	16	18	11
AG Cases Pending (close of FY)	14	18	8
Disciplinary Outcomes			
Revocation	4	4	3
Voluntary Surrender	0	0	0
Suspension	0	0	0
Probation with Suspension	2	0	1
Probation	8	6	11
Probationary License Issued	6	1	3
Other	4	2	3

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

BUDGET

ISSUE # 7: Budgetary constraints.

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

In its recent report to the Committee, the Board indicated that there have been various constraints that have affected its ability to perform certain tasks. Specifically, the following were noted:

- a) No memberships with professional associations
- b) No travel to or presentation at conferences
- c) Little to no consumer outreach or education activities

- d) No actions in terms of workforce development have been taken
- e) No data has been collected regarding the OT practitioner workforce supply and demand in California
- f) Inability to fill authorized positions due to the necessity of redirecting funds to offset enforcement-related over-expenditures

The Board reported that these deficiencies are directly related to budget constraints.

The Committee is concerned that the Board's outreach and education efforts have been hampered by travel restrictions. Additionally, the Committee is concerned that the Board has been unable to focus on collecting data or exploring workforce development issues as a result of budget constraints.

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

LICENSE PORTABILITY

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

Background: First Lady Michelle Obama and Dr. Jill Biden launched the Joining Forces campaign in order to assist military veterans and their spouses in accessing the workforce. In response to this campaign, Governors in over 20 states signed pro-military spouse license portability laws. Additionally, on January 24, 2011, U.S. President Barack Obama presented "Strengthening Our Military Families: Meeting America's Commitment," a document urging agencies to support and improve the lives of military families.

As a result of the Joining Forces campaign and the President's directive, the Department of Transportation and the Department of Defense issued a joint report to highlight the impact of state occupational licensing requirements on the careers of military spouses, who frequently move across state lines. Released in February 2012, the report, "Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines," revealed that approximately 35% of military spouses work in professions that require state licenses or certification and that military spouses are ten times more likely to have moved to another state in the last year compared to their civilian counterparts. In a 2008 Defense Manpower Data Center survey of active duty military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40% of those respondents who have moved indicated that 'easier state-to-state transfer of certification' would have helped them."

As a result of the survey, the Department of Transportation and the Department of Defense issued several recommendations, including the authorization of temporary licenses for military spouses if the applicant met state requirements. The report's recommendation specified:

Temporary licenses allow applicants to be employed while they fulfill all of the requirements for a permanent license, including examinations or endorsement, applications and additional fees. In developing expedited approaches that save military spouses time and money, DOD does not want to make licensure easier for military spouses to achieve at the expense of degrading their perceived value in their profession.

Several bills have been presented to the Legislature across the past few years that deal with providing expedited licenses to military veterans and spouses, exempting active duty military personnel from continuing education requirements and licensing fees. In 2012, AB 1904 (Block, Chapter 399, Statutes of 2012) was signed and requires a Board under the DCA to expedite the licensure process for military spouses and domestic partners of a military member who is on active duty in California.

As part of the 2012-2013 Budget Package, the California Legislature directed the DCA to prepare a report on the implementation of BPC § 35 relating to military experience and licensure. The law indicates:

It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in their code shall provide for methods of evaluation education, training and experience obtained in the armed services, if applicable to the requirements of the business, occupation or profession regulated... Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. (BPC §35)

The DCA provided a list of Boards that accept military experience and those who do not. The Occupational Therapy Board was included in the list of Boards that do not have specific statutes or regulations authorizing the acceptance of military experience towards licensure despite the fact that the current military requirements for OTs appear to be similar to those outlined in statute. However, the Accreditation Council for Occupational Therapy (ACOTE) and the National Board for Certification in Occupational Therapy (NBCOT) recognize military education and training as a qualifying educational program for OTAs.

The Occupational Therapy Act does not include specific standards for addressing military personnel who are licensed OTs or OTAs. However, the Act includes information on inactive license status (BPC § 2570.11). According to the Act, upon written request, the Board may grant inactive status to an OT or OTA who is in good standing. During inactive status, the licensee is exempt from CE requirements and pays a reduced licensing fee. Upon restoration of active status, the licensee must complete all CE requirements.

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

Staff Recommendation: *The Board should make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses. The Board should also consider waiving the fees for reinstating the license of an active duty military licensee. Consistent with the ACOTE and NBCOT policy for OTAs, the Board should also examine the possibility of accepting military training and experience towards licensure for OTs.*

PRACTICE ISSUES

ISSUE #9: Defining Occupational Therapy.

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

The Committee is unaware if the current definition in statute has posed a significant problem for OTs and OTAs which would justify making a change to the definition.

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

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

Background: When the Board was first established, there were no national minimum education standards required by occupational therapy education programs relating to the areas of swallowing assessment, evaluation, or intervention, the use of physical agent modalities, or hand therapy. Thus, these practice areas were identified as “advanced practice” since the practice areas were considered beyond the skills of a new graduate. Therefore, additional post-graduate requirements were established. Additionally, according to the Board, stakeholders who supported the advent of advanced practice guidelines believed “...these areas of practice would be high-risk with potential for harm.”

In its 2005 report to the JCBCCP, the Board stated that the educational standards were dependent upon interpretation by individual degree programs which diluted consistency in OT education and the ability to argue that OT education is consistent and that each entry level practitioner is equally prepared to deliver quality and safe OT services. The Board advocated that requiring minimum hours of instruction in all areas of occupational therapy services, such as hand therapy, swallowing and the use of physical agent modalities, would ensure entry level competency and consumer protection.

The Board also indicated in its 2005 report that the OTAC and the Board had participated in discussions at the national level regarding the need for accreditation standards for OT and OTA programs to be consistent. Testimony focused on making OT education more consistent from program to program, and from state to state. The Board noted that focusing just on the programs in California was not enough because a majority of the practitioners had been trained outside of California. The Board stated that while advanced practice certifications were being used to meet the need, in the long term it seems that if the profession is working in these specific areas, the education should be reflective of this practice to assure competence in the entry-level practitioner.

In its recent report to the legislature, the Board noted that all entry-level occupational therapy programs nationwide are required to meet standards in the occupational therapy curriculum including minimum education in the areas of swallowing assessment, evaluation, or intervention, and the use of physical agent modalities. Additionally, students complete courses in anatomy, physiology, kinesiology, tissue healing and how systems are altered by pathology and injury to provide hand therapy.

The Board believes that all new graduates will be sufficiently educated in the aforementioned areas and will be able to provide services competently. As such, the Board would like to eliminate the statutory requirement that OTs must meet specified post-professional education and supervised training requirements before providing services in the areas of hand therapy, swallowing assessment, evaluation, or intervention, or the use of physical agent modalities.

The Committee understands the Board's current rationale, but requires additional information from the Board regarding the advanced practice requirements and minimum education standards. Is there new data that is influencing the Board's position? Do the minimum education standards correspond with the advanced practice requirements? Are the advanced practice supervised training requirements comparable to those students receive during their OT programs?

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

**Continued Regulation of the Profession by the
Current Members of the BOARD**

ISSUE #11: Should the current Board continue to license and regulate OTs and OTAs?

Background: The health and safety of consumers is protected by well-regulated professions. The Board is charged with protecting the consumer from unprofessional and unsafe licensees.

Staff Recommendation: *The Committee recommends that OTs and OTAs continue to be regulated by the current Board in order to protect the interests of consumers and be reviewed once again in 4 years.*