

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Evan Low, Chair

AB 1510 (Dababneh) – As Introduced February 17, 2017

*NOTE: This bill is double referred, having been previously heard by the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media, on April 18, 2017 and approved on a 5-0 vote.*

**SUBJECT:** Athletic trainers.

**SUMMARY:** Establishes the Athletic Training Practice Act, under the California Board of Occupational Therapy (CBOT) for the licensure and regulation of athletic trainers (ATs).

**EXISTING LAW:**

- 1) Establishes requirements and procedures for legislative oversight of state board formation and licensed professional practice. (Government Code (GOV) §§ 9148-9148.8)
- 2) Requires, prior to consideration by the Legislature of legislation creating a new state board or legislation creating a new category of licensed professional, that the author or sponsor of the legislation develop a plan for the establishment and operation of the proposed state board or new category of licensed professional. (GOV § 9148.4)
- 3) The plan must include, but not be limited to, all of the following:
  - a) A description of the problem that the creation of the specific state board or new category of licensed professional would address, including the specific evidence of need for the state to address the problem. (GOV § 9148.4 (a))
  - b) The reasons why this proposed state board or new category of licensed professional was selected to address this problem, including the full range of alternatives considered and the reason why each of these alternatives was not selected. (GOV § 9148.4(b))
  - c) Alternatives that shall be considered include, but are not limited to, the following:
    - i) No action taken to establish a state board or create a new category of licensed professional. (GOV § 9148.4(b)(1))
    - ii) The use of a current state board or agency or the existence of a current category of licensed professional to address the problem, including any necessary changes to the mandate or composition of the existing state board or agency or current category of licensed professional. (GOV § 9148.4(b)(2))
    - iii) The various levels of regulation or administration available to address the problem. (GOV § 9148.4(b)(3))
    - iv) Addressing the problem by federal or local agencies. (GOV § 9148.4(b)(4))

- d) The specific public benefit or harm that would result from the establishment of the proposed state board or new category of licensed professional, the specific manner in which the proposed state board or new category of licensed professional would achieve this benefit, and the specific standards of performance which shall be used in reviewing the subsequent operation of the board or category of licensed professional. (GOV § 9148.4(c))
  - e) The specific source or sources of revenue and funding to be utilized by the proposed state board or new category of licensed professional in achieving its mandate. (GOV § 9148.4(d))
  - f) The necessary data and other information required in this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard. (GOV § 9148.4(e))
- 4) Authorizes the appropriate policy committee of the Legislature to evaluate the plan prepared in connection with a legislative proposal to create a new state board and provides that, if the appropriate policy committee does not evaluate a plan, then the Joint Sunset Review Committee shall evaluate the plan and provide recommendations to the Legislature. (GOV § 9148.8)
  - 5) Establishes the Department of Consumer Affairs (DCA) within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) § 100)
  - 6) Provides for the licensure and regulation of various professions and vocations by boards, bureaus, and other entities within the DCA. (BPC §§ 22, 100-144.5)
  - 7) Specifies that the DCA is under the control of a civil executive officer who is known as the Director of Consumer Affairs and specifies the duties and authority of the Director. (BPC §§ 150-166)
  - 8) Authorizes the DCA to levy a charge for estimated administrative expenses, not to exceed the available balance in any appropriation for any one fiscal year, in advance on a pro rata share basis against any of the boards, bureaus, commissions, divisions, and agencies, at the discretion of the director and with the approval of the Department of Finance. (BPC § 201)
  - 9) Establishes the Bagley-Keene Open Meetings Act, which covers all state boards and commissions and requires them to publicly notice their meetings, prepare agendas, accept public testimony, and conduct their meetings in public unless specifically authorized to meet in closed session. (GOV §§ 11120-11132)
  - 10) Provides for the licensure and regulation of occupational therapists, as defined, by the CBOT within the DCA until January 1, 2018, and provides that the repeal of these provisions subjects the CBOT to review by the appropriate policy committees of the Legislature. (BPC § 3716)

11) Administrative Procedure Act (GOV §§ 11340-11529)

**THIS BILL:**

- 1) Establishes, until January 1, 2025, the Athletic Training Practice Act.
- 2) Declares the following Legislative Intent:
  - a) California is one of only two states that does not currently regulate the practice of athletic training. This lack of regulation creates the risk that individuals who have lost or are unable to obtain licensure in another state will come to California to practice, thereby putting the public in danger and degrading the standards of the profession as a whole.
  - b) There is a pressing and immediate need to regulate the profession of athletic training in order to protect the public health, safety, and welfare. This need is particularly important because athletic trainers often work with school age children.
  - c) There is also a pressing and immediate need to regulate the profession of athletic training because the absence of regulation puts California businesses, colleges, universities, and other organizations at risk of liability solely because of the unlicensed status of athletic trainers in the state.
- 3) Defines, for the purposes of the practice act, the following:
  - a) “Athletic trainer” means a person who meets the requirements of this chapter, is licensed by the committee, and practices under the direction of a licensed physician or surgeon.
  - b) “Board” means the California Board of Occupational Therapy.
  - c) “Committee” means the Athletic Trainer Licensing Committee.
  - d) “Director” means the Director of Consumer Affairs.
- 4) Establishes the Athletic Trainer Licensing Committee within the CBOT and specifies the following:
  - a) The committee shall consist of seven members.
  - b) The seven committee members shall include the following:
    - i) Four licensed athletic trainers, and specifies procedures for selecting the athletic trainer members prior to licensure of athletic trainers in this state.
    - ii) One public member.
    - iii) One physician and surgeon licensed by the Medical Board of California or one osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California.
    - iv) One occupational therapist licensed by the board.

- c) Subject to confirmation by the Senate, the Governor shall appoint two of the licensed athletic trainers, the public member, the physician and surgeon or osteopathic physician and surgeon, and the licensed occupational therapist. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a licensed athletic trainer.
  - d) All appointments are for a term of four years and shall expire on June 30 of the year in which the term expires, as specified.
  - e) Each member of the committee shall receive per diem and expenses as provided under existing law.
  - f) Protection of the public shall be the highest priority for the committee in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.
- 5) Requires the Athletic Trainer Licensing Committee to do the following:
- a) Adopt, repeal, and amend regulations as may be necessary to enable it to administer this chapter, as provided.
  - b) Allows the committee to consult the professional standards issued by the National Athletic Trainers Association, the Board of Certification, Inc., the Commission on Accreditation of Athletic Training Education, or any other nationally recognized professional athletic training organization before adopting regulations.
  - c) Approve programs for the education and training of athletic trainers.
  - d) Investigate each applicant, before a license is issued, in order to determine whether the applicant meets the qualifications required by this chapter.
- 6) Requires the committee to issue an athletic training license to an applicant who meets all of the following requirements:
- a) Has submitted an application developed by the committee that includes evidence that the applicant has graduated from a professional degree program in athletic training accredited by the Commission on Accreditation of Athletic Training Education, or its predecessors or successors, and approved by the committee, at an accredited postsecondary institution or institutions approved by the committee. The professional degree program shall consist of didactic, clinical, and research experiences in athletic training using critical thinking and weighing of evidence.
  - b) Has passed an athletic training certification examination offered by the Board of Certification, Inc., its predecessors or successors, or another nationally accredited athletic trainer certification agency approved and recognized by the committee.
  - c) Possesses a certificate in Cardio Pulmonary Resuscitation (CPR) and Automated External Defibrillator (AED), as specified.
  - d) Has paid the application fee established by the committee.

- 7) Requires the committee to "grandfather" specified athletic training practitioners. Specifically, the committee shall issue an athletic training license to an applicant who did not graduate from an accredited athletic training education program described under the practice act, but who received athletic training via an internship, if the applicant meets all of the following requirements:
  - a) Furnishes evidence satisfactory to the committee of completion of a degree at an accredited postsecondary institution that included instruction in basic sciences related to, and on the practice of, athletic training.
  - b) Passes the required examination.
  - c) Completes at least 1,500 hours of clinical experience under an athletic trainer certified by a certification agency, as specified.
  - d) Possesses a certificate in CPR and AED, as specified.
  - e) Pays the application fee.
- 8) Licenses are valid for two years and may be renewed if the licensee meets the following renewal requirements:
  - a) Pays the renewal fee as established by the committee.
  - b) Submits proof of all of the following:
    - i) Satisfactory completion of continuing education, as determined by the committee.
    - ii) Current athletic training certification from an approved certification body, as specified.
    - iii) Current certification CPR and AED certification.
- 9) Authorizes the committee to deny a license or the renewal of a license for an applicant or licensee who is described by any of the following:
  - a) Does not meet the requirements of this chapter.
  - b) Has had an athletic training license, certification, or registration revoked or suspended by an accredited organization, state, or territory.
  - c) Has been convicted of a felony or any other crime that substantially relates to the functions or duties of an athletic trainer.
  - d) Has committed unprofessional conduct, as specified.
- 10) Authorizes the committee to order any of the following actions relative to an athletic training license after a hearing for unprofessional conduct, which includes, but is not limited to, a violation of this chapter, any regulation adopted by the committee pursuant to this chapter, and revocation or suspension of an athletic training license, certification, or registration by an accredited organization, state, or territory:

- a) Issuance of the athletic training license subject to terms and conditions.
- b) Suspension or revocation of the athletic training license.
- c) Imposition of probationary conditions upon the athletic training license.

11) Establishes the following offenses:

- a) A person shall not engage in the practice of athletic training unless licensed under the practice act.
- b) A person shall not use the title “athletic trainer,” “licensed athletic trainer,” “certified athletic trainer,” “athletic trainer certified,” “a.t.,” “a.t.l.,” “c.a.t.,” “a.t.c.,” or any other variation of these terms, or any other similar terms indicating that the person is an athletic trainer, unless that person is licensed under the practice act.
- c) Notwithstanding the above, there is an exception period for a person who practiced athletic training in California for a period of 20 consecutive years prior to July 1, 2018, and is not eligible on that date for an athletic training license to engage in the practice of athletic training and use the title “athletic trainer” without being licensed by the committee, upon registration with the committee. However, on and after January 1, 2021, a person shall not engage in the practice of athletic training or use the title “athletic trainer” unless he or she is licensed by the committee pursuant to this chapter.

12) Establishes the following relating to the scope of practice of athletic training:

- a) The scope of practice of athletic training includes the following:
  - i) Risk management and injury or illness prevention.
  - ii) The clinical evaluation and assessment of an injury sustained or exacerbated while participating in physical activity.
  - iii) The immediate care of an injury sustained or exacerbated while participating in physical activity or a condition exacerbated while participating in physical activity.
  - iv) The rehabilitation and reconditioning from an injury or an illness sustained or exacerbated while participating in physical activity.
- b) The practice of athletic training does not include grade 5 spinal manipulations.
- c) An athletic trainer shall refer a patient to an appropriate licensed health care provider when the treatment or management of the injury or condition does not fall within the practice of athletic training.
- d) An athletic trainer shall not provide, offer to provide, or represent that he or she is qualified to provide any treatment that he or she is not qualified to perform by his or her education, training, or experience, or that he or she is otherwise prohibited by law from performing.
- e) Defines, for purposes of athletic training scope of practice, the following:

- i) "Injury" means an injury sustained as a result of, or exacerbated by, participation in athletics or physical activity for which the athletic trainer has had formal training during his or her professional education program or advanced post-professional study and falls within the practice of athletic training.
  - ii) "Condition" means a condition acutely exacerbated while participating in athletics or physical activity for which the athletic trainer has had formal training during his or her professional education program or advanced post-professional study and falls within the practice of athletic training.
- f) An athletic trainer shall render treatment within his or her scope of practice under the direction of a physician and surgeon licensed by the Medical Board of California or an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, as provided.
- g) Notwithstanding any other law, and consistent with the practice act, the committee may establish other alternative mechanisms for the adequate direction of an athletic trainer.
- 13) Provides the following exceptions from the licensure requirement:
- a) An athletic trainer licensed, certified, or registered in another state or country who is in California temporarily, traveling with a team or organization, to engage in the practice of athletic training for, among other things, an athletic or sporting event.
  - b) An athletic trainer licensed, certified, or registered in another state who is invited by a sponsoring organization, such as the United States Olympic Committee, to temporarily provide athletic training services under his or her state's scope of practice for athletic training.
  - c) A student enrolled in an athletic training education program, while participating in educational activities during the course of his or her educational rotations under the supervision and guidance of an athletic trainer licensed under this chapter, a physician and surgeon licensed by the Medical Board of California, an osteopathic physician and surgeon licensed by the Osteopathic Medical Board of California, or other licensed health care provider.
  - d) A member or employee of the United States Armed Forces, licensed, certified, or registered in another state, as part of his or her temporary federal deployment or employment in California for a limited time.
  - e) Any person licensed and regulated under the healing arts provisions of the BPC (Division 2, BPC §§ 500-4999.129). Specifically, the practice act does not limit, impair, or otherwise apply to the practice of healing arts licensees.
- 14) Establishes the following relating to funding:
- a) The committee shall establish license application and renewal fees in an amount sufficient to cover the reasonable regulatory costs of administering the practice act.
  - b) There is an Athletic Trainers' Fund.

- c) All fees collected pursuant to the practice act shall be paid into the fund and shall be available to the committee, upon appropriation by the Legislature, for the regulatory purpose of implementing the practice act.
  - d) The Director of Consumer Affairs may seek and receive funds from the California Athletic Trainers Association for the initial costs of implementing the practice act, as specified.
- 15) Implementation of the practice act shall be delayed until sufficient funds are collected and deposited as specified, in the following timeline:
- a) Articles 1 (Administration) and 2 (Athletic Training) shall not become operative unless the director determines, on or before January 1, 2019, that sufficient funds to pay for the initial costs of the practice act have been received from the California Athletic Trainers Association, or some other source of funding, and the funds are deposited in the Athletic Trainers' Fund, in which case Article 1 shall become operative on the first January 1 or July 1, whichever occurs first, immediately following this determination.
  - b) Article 2 shall become operative on the first January 1 or July 1, whichever occurs first, immediately following the operative date of Article 1. If the director finds that sufficient funds are not available by January 1, 2019, the director shall reexamine the funding status by June 30 of each subsequent year until either the director determines that sufficient funds have been received and deposited or until January 1, 2021, whichever occurs first.

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal by the Legislative Counsel.

**COMMENTS:**

**Purpose.** This bill is sponsored by the author. According to the author, "Athletic trainers are physical medicine and rehabilitation specialists who focus on the prevention, treatment, and rehabilitation of injuries. Although they are recognized by the American Medical Association, U.S. Health Resources Services Administration, and the U.S. Department of Health and Human Services as a healthcare profession, California remains the only state that does not regulate the profession of athletic training. Approximately 30% of individuals calling themselves athletic trainers in high schools are not qualified. This poses significant risks to student athletes because the mistakes of unlicensed athletic trainers can lead to serious issues, including permanent disability or death. Additionally, an increasing number of states, such as Utah, Texas, Hawaii, and Massachusetts, have made it illegal for unregulated athletic trainers to practice. When California athletic trainers travel with their teams or companies to these states, both the employers and athletic trainers are exposed to legal and financial consequences just because they are trying to do their job. In order to effectively protect the public, the profession, and California employers, athletic trainers need to be licensed."

**Background.** In California, many professions require a license to legally practice. Many of the professional licenses are administered by licensing boards, bureaus, and other entities within the DCA. The DCA licensing entities are established to protect the people of California through adequate regulation of businesses and professions that engage in activities that risk harm to the health, safety, and welfare of the public (BPC § 101.6).



The licensing entities establish the minimum level of competency required to engage in the occupations they regulate. As a result, an applicant seeking a license to practice from a licensing authority must demonstrate the ability to provide safe and effective services to the public. However, to avoid creating unnecessary barriers to entering a profession, the requirements should not require more than the minimum amount of training, education, and experience necessary to practice safely.

*Sunrise of New Licensing Programs.* The Legislature uses a Sunrise process for the purpose of assessing requests for new or increased occupational regulation, pursuant to GOV § 9148 and policy Committee Rules. The process includes a questionnaire and a set of evaluative scales to be completed by the group supporting regulation. The questionnaire is an objective tool for collecting and analyzing information needed to arrive at accurate, informed, and publicly supportable decisions regarding the merits of regulatory proposals. According to the author's Sunrise Questionnaire, "Athletic trainers are seeking licensure. The California Athletic Trainers Association (CATA) is the membership organization pursuing regulation for the athletic training profession in California."

The Legislature often receives requests for new or expanded occupational regulation. The regulatory proposals are generally intended to assure the competence of specified practitioners in different occupations. The requests have resulted in a proliferation of licensure and certification programs, which are often met with mixed reviews. Proponents argue that licensing benefits the public by assuring competence and an avenue for consumer redress. Critics disturbed by increased governmental intervention in the marketplace have cited shortages of practitioners and increased costs of service as indicators that regulation benefits a profession more than it benefits the public.

State legislators and administrative officials are expected to weigh arguments regarding the necessity of such regulation, determine the appropriate level of regulation (e.g., registration, certification or licensure), and select a set of standards (education, experience, examinations) that will assure competency. Requests for regulatory decisions often result in sharp differences of opinion as supporters and critics of the proposed regulation present their arguments. As a result, accurate information is necessary.

The Sunrise process was designed to ensure that necessary information is collected and that the arguments presented are objectively weighed. In developing the sunrise process, the Legislature and the DCA looked at methods for assessing needs for examinations, educational standards, and experience requirements that would assure provider competence. The project resulted in the current Sunrise process, an evaluative process designed to provide a uniform basis for the presentation and review of proposed occupational regulation. The Sunrise process includes a questionnaire and evaluative scales that allow systematic collection and analysis of the data required for decisions about new regulation.

This process accomplishes the following: (1) places the burden of showing the necessity for new regulations on the requesting groups; (2) allows the systematic collection of opinions both pro and con; and (3) documents the criteria used to decide upon new regulatory proposals. This helps to ensure that regulatory mechanisms are imposed only when proven to be the most effective way of protecting the public health, safety and welfare.

If review of the proponents' case indicates that regulation is appropriate, a determination must be made regarding the appropriate level of regulation. As noted above, the public is best served by

minimal government intervention. The definitions and guidelines below are intended to facilitate selection of the least restrictive level of regulation that will adequately protect the public interest.

- Level I: Strengthen existing laws and controls. The choice may include providing stricter civil actions or criminal prosecutions. It is most appropriate where the public can effectively implement control.
- Level II: Impose inspections and enforcement requirements. This choice may allow inspection and enforcement by a state agency. These should be considered where a service is provided that involves a hazard to the public health, safety, or welfare. Enforcement may include recourse to court injunctions, and should apply to the business or organization providing the service, rather than the individual employees.
- Level III: Impose registration requirements. Under registration, the state maintains an official roster of the practitioners of an occupation, recording also the location and other particulars of the practice, including a description of the services provided. This level of regulation is appropriate where any threat to the public is small.
- Level IV: Provide opportunity for certification. Certification is voluntary; it grants recognition to persons who have met certain prerequisites. Certification protects a title: non-certified persons may perform the same tasks but may not use “certified” in their titles. Usually an occupational association is the certifying agency, but the state can be one as well. Either can provide consumers a list of certified practitioners who have agreed to provide services of a specified quality for a stated fee. This level of regulation is appropriate when potential for harm exists and when consumers have substantial need to rely on the services of practitioners.
- Level V: Impose licensure requirements. Under licensure, the state allows persons who meet predetermined standards to work at an occupation that would be unlawful for an unlicensed person to practice. Licensure protects the scope of practice and the title. It also provides for a disciplinary process administered by a state control agency. This level of regulation is appropriate only in those cases where a clear potential for harm exists and no lesser level of regulation can be shown to adequately protect the public.

*Licensing Reform.* In July of 2015, the White House issued a report, *Occupational Licensing: A Framework for Policymakers*. The report was prepared by the Department of the Treasury Office of Economic Policy, the Council of Economic Advisers, and the Department of Labor. The report noted that there has been a sharp increase in the number of workers holding a license. It also noted that, while licensing offers important protections to consumers and can benefit workers, there are also substantial costs and licensing requirements may not always align with the skills necessary for the profession being licensed. Specifically, the report found:

“There is evidence that licensing requirements raise the price of goods and services, restrict employment opportunities, and make it more difficult for workers to take their skills across State lines. Too often, policymakers do not carefully weigh these costs and benefits when making decisions about whether or how to regulate a profession through licensing. In some cases, alternative forms of occupational regulation, such as State certification, may offer a better balance between consumer protections and flexibility for workers.”

In response to the report, the Little Hoover Commission began a study on occupational licensing in October 2015. The Little Hoover Commission, formally known as the Milton Marks “Little

Hoover” Commission on California State Government Organization and Economy, is an independent state oversight agency.

In October 2016, the Little Hoover Commission published its report, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers* (Report #234). The report noted:

“One out of every five Californians must receive permission from the government to work. For millions of Californians, that means contending with the hurdles of becoming licensed. Sixty years ago the number needing licenses nationally was one in 20. What has changed? What once was a tool for consumer protection, particularly in the healing arts professions, is now a vehicle to promote a multitude of other goals. These include professionalism of occupations, standardization of services, a guarantee of quality and a means of limiting competition among practitioners, among others. Many of these goals, though usually well intentioned, have had a larger impact of preventing Californians from working, particularly harder-to-employ groups such as former offenders and those trained or educated outside of California, including veterans, military spouses and foreign-trained workers.”

The Commission found that the effects of occupational licensing may extend beyond the people entering a licensed occupation. The Commission specifically expressed concern over those with lower incomes, "When government limits the supply of providers, the cost of services goes up. Those with limited means have a harder time accessing those services. Consequently, occupational licensing hurts those at the bottom of the economic ladder twice: first by imposing significant costs on them should they try to enter a licensed occupation and second by pricing the services provided by licensed professionals out of reach."

As a result, the Commission recommended caution when looking at new licensing schemes (in addition to reviewing the current ones). Among other things, it recommended participating in a White House effort to review licensing programs across the country. It is providing, through the Department of Labor, \$7.5 million in funding for a consortium of states to assess whether current levels of occupational regulation are appropriate.

The Commission also recommended that the state consider the impact of licensing on groups disproportionately harmed by the regulations, including:

- 1) Former offenders. Witnesses testified there is no evidence demonstrating that having a criminal record is related to providing low quality services. Unnecessary restrictions on criminal convictions simply punish again people who have already served their time.
- 2) Military spouses. When military spouses cannot transfer their licenses across state lines due to state restrictions, they spend precious time and resources re-completing requirements they already have, or taking, in all likelihood, a lower-paying, lower-skilled job. Married service members overwhelmingly report their spouse’s ability to maintain a career affects their decision to remain in the military.
- 3) Veterans. Veterans often face difficulty transferring their military education and experience into civilian licensing requirements. Sometimes they must repeat these requirements for a job they have been performing for years. Taxpayers then pay twice for

them to learn the same set of skills: once while in the military and again through the G.I. Bill.

- 4) Foreign-trained workers. Like veterans, foreign-trained workers often have difficulty translating their education and experience into state licensing requirements and often take lower-skilled jobs instead. With worker shortages looming in mid- and high-skilled professions, the state should embrace these workers instead of erecting barriers to keep them out of jobs.

The Commission further noted that examining and assessing occupational regulations does not mean stripping consumer protection. Instead, it is an exercise in striking the appropriate balance between protecting consumers and limiting access to occupations and services.

For additional discussion please see:

Morris M. Kleiner, *Reforming Occupational Licensing Policies*, Discussion Paper 2015-01 (March 2015). The Hamilton Project; Brookings Institution.

Michelle Natividad Rodriguez and Beth Avery, *Unlicensed & Untapped: Removing Barriers to State Occupational Licenses for People with Records* (April 2016). National Employment Law Project.

*Athletic Trainers.* According to the author, "There is urgent and compelling need to license the profession of athletic training to: 1) protect the public; 2) protect employers of athletic trainers; and 3) protect athletic trainers." While protection of athletic trainers and their employers are a welcome collateral benefit, the focus of licensing is consumer protection.

According to the author's sunrise questionnaire, "The state of California has demanded strict standards for medical professionals. This reduces the chance of incompetent persons making difficult and life threatening decisions. Athletic training is one of the last allied health professions to be regulated by California, thus increasing the likelihood that unqualified, unethical or sanctioned individuals may practice athletic training."

With regard to specific harms:

Nationally in 2010, nearly 100 young athletes died, including 13 in California as a result of their participation in sports. These deaths were due to injuries and illnesses that included: mild traumatic brain injury, severe heat illness, exertional sickling, sport-induced asthma, or sudden cardiac arrest – all during or immediately following sporting activity. Additionally, children suffer cervical spine injuries and other catastrophic events in sports-related activity.

Athletic trainers are trained to evaluate and manage these conditions, as well as other potentially catastrophic injuries such as knee dislocations and fractures that if left unmanaged, or are mismanaged, may result in the loss of a limb. They also work with athletes and other patients who are diabetic, asthmatic, or have other chronic health conditions in which the patient may suffer acute or life threatening episodes.

As noted above, the questionnaire states that the applicant group representing the athletic trainers in this effort is the California Athletic Trainers Association (CATA). The CATA is a professional association that represents athletic trainers in California and includes both certified and non-certified members. Certification is obtained from the Board of Certification for the Athletic Trainer (BOCATC). According to the CATA, education for athletic training has been standardized and is accredited by a national accreditation agency, the Commission on Accreditation of Athletic Training Education (CAATE).

*Occupational Therapy and the CBOT.* This bill establishes the athletic trainer licensing program under the CBOT. The CBOT is a licensing board under the DCA. The purpose of the CBOT is to protect consumers through regulation of the practice of occupational therapy in California. Specifically, the CBOT administers the licensing and enforcement programs for occupational therapists (OTs), occupational therapy assistants (OTAs), and occupational therapy aides. The CBOT also establishes and clarifies state-specific process and practice standards through administrative rulemaking.

In California, regulation of occupational therapy began in 1977. Initially, regulation was limited to a title protection statute, which prohibited the use of titles such as “occupational therapist” or “O.T.” without meeting specific requirements. In 2000, the Legislature passed the first iteration of the Occupational Therapy Practice Act. The OT Practice Act establishes the CBOT and specifies the scope, licensing requirements and fees, and penalties for violations of the OT Practice Act, including unlicensed practice.

Under the OT Practice Act, it is a misdemeanor to practice occupational therapy or hold oneself out as being able to practice occupational therapy, via titles or other methods, unless licensed or otherwise authorized by law. The OT Practice Act provides, among others, the following definitions relating to the breadth and scope of occupational therapy as regulated in California:

- “Practice of occupational therapy” means the therapeutic use of occupations.
- “Occupations” are “purposeful and meaningful goal-directed activities... which engage the individual’s body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and maintain health.”
- “Occupational therapy services” include “occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)).”
- “Occupational therapy assessment” is the identification of “performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities.”
- “Occupational therapy treatment” is defined as being “focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability.” Treatment “may involve modification of tasks or environments to allow an individual to achieve maximum independence.”

- “Occupational therapy techniques that are used for treatment” are defined as involving “teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices (excluding gait training).”
- “Occupational therapy consultation” provides expert advice to enhance function and quality of life. Consultation, like treatment, may also “involve modification of tasks or environments to allow an individual to achieve maximum independence.”

The CBOT oversees over 12,000 OTs and 2,500 OTAs. During each of the last three fiscal years, the CBOT issued a combined average of 1,018 licenses and renewed a combined average of 6,849 licenses.

The CBOT’s mandates include:

- Administer, coordinate, and enforce the provisions of the Practice Act.
- Evaluate the qualifications of applicants.
- Approve the examinations for licensure.
- Adopt rules relating to professional conduct to carry out the purpose of the Practice Act, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy or to assist in the practice of occupational therapy in this state.

The current CBOT mission statement, as stated in its *2016–2019 Strategic Plan*, is as follows:

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

The CBOT also interacts frequently with stakeholders, such as professional associations and consumers. The two professional associations cited in the CBOT’s 2016 *Sunset Review Report* are the local Occupational Therapy Association of California, Inc. (OTAC) and the national American Occupational Therapy Association, Inc. (AOTA). The CBOT also utilizes the examination provided by the National Board for Certification in Occupational Therapy (NBCOT), a voluntary certification organization.

**Prior Related Legislation.** AB 161 (Chau) of 2015 would have established certification and training requirements for athletic trainers and prohibit individuals from calling themselves athletic trainers unless they meet those requirements. *NOTE: This bill was vetoed by Governor Brown who wrote in his veto message that the conditions set forth in the bill “impose unnecessary burdens on athletic trainers without sufficient evidence that they are really needed.”*

AB 1890 (Chau) of 2014 was substantially similar to AB 161. *NOTE: This bill was vetoed by Governor Brown who wrote in his veto message that the conditions set forth in the bill “impose unnecessary burdens on athletic trainers without sufficient evidence that they are really needed.”*

AB 864 (Skinner) of 2013 would have established the licensure and regulation of athletic trainers through the creation of an Athletic Trainer Licensing Committee under the Physical Therapy Board of California. *NOTE: This bill died in the Assembly Committee on Appropriations.*

SB 1273 (Lowenthal) of 2012 was substantially similar to AB 864. *NOTE: This bill died in the Senate Committee on Business, Professions, and Economic Development.*

AB 374 (Hayashi) of 2011 as introduced would have established the Athletic Trainer Licensing Committee within the Medical Board of California to license and regulate athletic trainers commencing January 1, 2013, with a sunset date of January 1, 2018. The bill was later amended to provide title protection for athletic trainers. *NOTE: This bill was later amended to become a bill by Assemblymember Hill that dealt with funeral embalmers and signed by the Governor.)*

AB 1647 (Hayashi) of 2010 would have established certification and training requirements for athletic trainers and prohibited individuals from calling themselves athletic trainers unless they meet those requirements. *NOTE: This bill was vetoed by Governor Schwarzenegger.*

SB 284 (Lowenthal) of 2007 would have enacted the Athletic Trainers Registration Act prohibiting a person from representing himself or herself as a “certified athletic trainer,” unless he or she is registered by an athletic training organization. *NOTE: This bill was vetoed by Governor Schwarzenegger.*

SB 1397 (Lowenthal) of 2006 would have enacted the Athletic Trainers Certification Act, prohibiting a person from representing him or herself as an athletic trainer unless he or she is certified as an athletic trainer by an athletic training organization, as defined. *NOTE: This bill was vetoed by Governor Schwarzenegger.*

AB 614 (Lowenthal) of 2003 would have required the DCA to submit a recommendation to the Legislature as to whether the state should license and regulate athletic trainers by January 1, 2006, if the DCA is provided with an occupational analysis of persons providing athletic trainer services by July 1, 2005. *NOTE: This bill was held in Senate Committee on Business and Professions Committee to allow the Joint Committee on Boards, Commissions and Consumer Protections to examine whether athletic trainers should be licensed as part of the Sunrise process.*

AB 2789 (Lowenthal) of 2002 would have required the Department of Consumer Affairs to review the need for licensing of athletic trainers and undertake an occupational analysis. *NOTE: This bill was held under submission in the Assembly Committee on Appropriations.*

SB 2036 (McCorquodale), Chapter 908, Statutes of 1994, expanded existing law into the current Sunrise process, covering the creation of new categories of licensed professionals and the revision of the scope of practice of an existing category of licensed professional.

#### **POLICY ISSUES FOR CONSIDERATION:**

*Timeline for Consideration of Evidence.* The Committee may wish to recommend holding this bill until the second year of the current Legislative Session. Pursuant to GOV §§ 9148-9148.8, the Committee requested that the author complete a Sunrise Questionnaire in late March. Committee rules specify that the Sunrise Questionnaire should be returned "at least seven (7) days prior to the proposed hearing of the bill." The Committee received the author's 44 page Sunrise Questionnaire on Thursday, April 20, 2017, at 3:57 p.m. The questionnaire's numerous appendices were delivered shortly after at 4:15 p.m. Additional time is required for a fair and diligent evaluation.

*Timeline for Consideration of Amendments.* The CBOT, the OTAC, and the CATA have each proposed separate sets of amendments (with some overlap) for review. The Committee has not had a sufficient amount of time to review the amendments. The Committee received 15 pages of proposed author amendments on Thursday, April 20, 2017, at 4:48 p.m.

In addition, the CBOT, which is the regulator under this bill, is currently supportive of this bill if amended. Due to the nature of the board decision-making process, the CBOT was not able to submit amendments until Thursday, April 20, 2017, at 3:04 p.m. Additional time would allow the Committee to review and reconcile the CBOT's amendments with those from the author and opposition.

Additional time would also give the CBOT time to meet and vote to continue to support as amended if the amendments differ. The CBOT's vote did not specify whether deviation from the proposed language would be supported.

Further, this bill was first referred to the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media, which also recommended amendments. Additional time would allow this Committee to coordinate with the Committee of first-referral, which retains jurisdiction over this bill.

*Need for Legislation.* There is significant disagreement over the need for this legislation among stakeholders. There is also disagreement over the necessity of establishing licensure over title protection. The Sunrise Questionnaire is one tool the Committee may rely on to settle arguments based in fact. The Committee may wish to recommend holding this bill to provide sufficient time to review the Questionnaire.

*Scope of Practice.* There is significant disagreement over the way the athletic trainer scope of practice is drafted, including whether administration of medication should be excluded and the proper way to delineate the conditions an athletic trainer may provide services for. While there currently appears to be conceptual agreement, additional time to work with stakeholders is needed.

*Physician Direction Versus Supervision.* This bill authorizes an athletic trainer to perform services under the direction of a physician and surgeon and authorizes the Athletic Training Committee to determine additional methods for direction. Direction is not a recognized form of supervision under California law. Additional time is necessary to determine whether an athletic trainer operates under standardized protocols, a delegated services agreement, or some other form of supervision. Further, time is needed to explore whether the Athletic Training Committee should have the authority to amend the supervision requirement.

*Overlapping Practitioners.* The opposition argues that there are already practitioners who may provide athletic training services. This argument may be based in workplace competition. One study looked at the influence of occupational licensing on two occupations that provide similar services: occupational therapists and physical therapists (Cai, Jing and Morris M. Kleiner, *The Labor Market Consequences of Regulating Similar Occupations: The Licensing of Occupational and Physical Therapists*, Upjohn Institute Working Paper 16-259 (2016)).

That study noted, among other things, "Most of the tasks for these two occupations differ, but several jobs overlap, and individuals in both occupations could have legal jurisdiction over these tasks. We empirically examine how these two occupations interact with one another in the labor



market on wage determination and employment.... The ability of these two occupations to be both complements to and substitutes for one another provides new evidence on how the growing number of regulated occupations that are similar interact and influence one another."

*Governor's Vetoes.* Last session, two different bills reached the Governor's desk which would have provided certified athletic trainers with title protection. Each was vetoed, with essentially the same message:

"This bill prohibits a person from using the title of athletic trainer unless they have received a bachelor's degree and are certified by a national certification body. I vetoed a nearly identical measure last year and continue to believe that the conditions set forth in this bill impose unnecessary burdens on athletic trainers without sufficient evidence that changes are needed."

Given that title protection is a lesser form of regulation than licensing, this bill increases the burdens. However, the Sunrise Questionnaire contains a significant amount of information and, if sufficiently reviewed, may provide evidence to support the proposed licensing program.

#### **IMPLEMENTATION ISSUES:**

There are a number of outstanding implementations issues that need time to address, such as whether the Athletic Trainers' Fund should be merged with the Occupational Therapy Fund. Due to the low number of potential licensees, the application and renewal fees may need to be higher than expected to sustain the program.

For example, the Board of Vocational Nursing and Psychiatric Technicians previously had two funds, one for vocational nurses and one for psychiatric technicians. While the licenses are relatively similar, because there are significantly less psychiatric technicians than vocational nurses, the psychiatric technicians paid twice the amount in license fees than vocational nurses (\$300 to \$150). This was remedied by merging the funds in AB 179 (Bonilla), Chapter 510, Statutes of 2015. Additional time is necessary to explore these issues.

#### **REGISTERED SUPPORT:**

Advocates for Injured Athletes  
American Medical Society for Sports Medicine  
Association of Independent California Colleges and Universities  
Beta Health Care Group  
Breg, Inc.  
Board of Certification, Inc. (BOC)  
California Athletic Trainers Association (CATA)  
California Baptist University  
California Community College Athletic Trainers Association  
Chapman University  
California Interscholastic Federation and Sections  
Commission on Accreditation of Athletic Training Education (CAATE)  
DonJoy  
Eric Paredes Save a Life Foundation  
Los Angeles Unified School District – Board of Education  
National Athletic Trainers Association  
National Federation of State High School Associations

National Collegiate Athletic Association  
National Hockey League  
University of the Pacific  
Onsite Innovations  
Play Safe  
Providence Health System

**REGISTERED OPPOSITION:**

California Academy of PAs (unless amended)  
California Nurses Association  
California Physical Therapy Association  
Occupational Therapy Association of California (unless amended)  
Numerous individual occupational therapists  
Numerous individual physical therapists

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