

BACKGROUND PAPER FOR THE CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Joint Oversight Hearing, March 6, 2017

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

BRIEF OVERVIEW OF THE BOARD

Function of the Board

The California Board of Occupational Therapy (CBOT) is a licensing board under the Department of Consumer Affairs (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.¹

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.² In 2000, the Legislature passed the first iteration of the Occupational Therapy Practice Act.³ The Practice Act establishes the CBOT and specifies the scope, licensing requirements and fees, and penalties for violations of the Practice Act, including unlicensed practice.⁴

Under the 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 Practice Act provides, among others, the following definitions relating to the breadth and scope of occupational therapy as regulated in California⁵:

- “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.”

¹ California Code of Regulations (CCR), tit. 16, §§ 4100-4187.

² AB 1100 (Egeland), Chapter 836, Statutes of 1977.

³ SB 1046 (Murray), Chapter 697, Statutes of 2000.

⁴ Business and Professions Code (BPC) §§ 2570-2571.

⁵ BPC § 2570.2.

- “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 (FYs),⁶ the CBOT issued a combined average of 1,018 licenses and renewed a combined average of 6,849 licenses.

The CBOT’s mandates include⁷:

- 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.

⁶ A fiscal (budget) year starts on July 1 and ends on June 30 the following calendar year.

⁷ BPC § 2750.20.

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 (discussed in further detail under the Examination section).

Board Membership

The CBOT is composed of seven members. It has a professional member majority—four professional members and three public members. The Governor appoints five members in total, the four professional members and one of the public members. The Senate Rules Committee and the Assembly Speaker appoint one public member each. Members receive no compensation but are provided \$100 per diem for each day spent performing official duties and are reimbursed for related travel.

The CBOT is required to meet at least three times each calendar year, with at least one meeting in the cities of Sacramento, Los Angeles, and San Francisco. The CBOT meetings are subject to the Bagley-Keene Open Meeting Act, which requires public notice and an opportunity for the public to testify.⁸

The following table lists the current members of the CBOT, including their background, when they were last appointed, their term expiration date, and their appointing authority.

| Board Members | Appointment | Term Expiration | Appointing Authority |
|--|-------------|-----------------|----------------------|
| <p>Denise M. Miller, President, Professional Member, is the director of the Live Well Senior Program at the Glendale Adventist Medical Center, where she was previously the manager of physician relations and coordinator of occupational and hand therapy. Miller also worked as a consultant and director of industrial therapy and training at Key Method Inc. She earned her MBA from La Sierra University.</p> | 01/05/16 | 12/31/19 | Governor |
| <p>Richard Bookwalter, Vice-President, Professional Member, is an OT for durable medical equipment and rehabilitation outcomes for Kaiser Foundation Hospitals Inc. He has also worked as: a supervisor of outpatient rehabilitation at the CA Pacific Medical Center; an OT and program manager at the Institute on Aging; a home health OT at the UCSF Medical Center; an OT at the Davies Medical Center; a development associate at the Manpower Demonstration Research Corporation; and a manager in development communications at the Columbia University Teachers College. Bookwalter earned his MS in occupational therapy from CSU San Jose.</p> | 01/05/16 | 12/31/16 | Governor |

⁸ Article 9 (commencing with § 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code (GOV).

| | | | |
|--|----------|-----------|-------------------------|
| Sharon L. Pavlovich, Secretary, Professional Member , is an assistant professor at Loma Linda University. She has also worked as a certified OTA at the Loma Linda University Medical Center and at the Casa Colina Centers for Rehabilitation. Pavlovich is a member of the OTAC and the AOTA. Pavlovich earned a MA in management from the University of Redlands. | 01/05/16 | 12/31/19 | Governor |
| Teresa Davies, Public Member , is a small business owner operating an art studio, Wine and Design, in the Bay Area. She previously worked as a Senior Manager for Pacific Gas & Electric, having spent 15 years in the energy and utility sector, and is a Navy Veteran. She is a current graduate student pursuing a MPA from Indiana University's School of Public and Environmental Affairs (SPEA). | 01/11/17 | 12/31/20 | Senate Rules |
| Jeffrey Ferro, Public Member , has been a labor activist since 1987. He started as a crew assistant at the Southern California Gas Company, became actively involved in his local union and the International Chemical Workers Union Local 58. In 1996, he joined the UFCW's International Chemical Workers Union Council and eventually promoted to Executive Assistant to the Executive Vice President/Director of Organizing. Ferro obtained his undergraduate degree from Crafton Hills Community College, attended CSU Polytechnic Pomona, and graduated from the Harvard Trade Union Program. | 01/13/14 | 12/31/16* | Speaker of the Assembly |
| Laura L. Hayth, Professional Member , has been an area vice president at Aegis Therapies since 2012 and a freelance writer since 2001. She has also worked as a compliance resource and lead investigator, and director of rehabilitation prior to that, at Ensign Group; a rehabilitation program manager at People First Rehabilitation; and a case manager at the Bluegrass Regional Mental Health and Retardation Board. She is a member of the NCBOT and the AOTA. Hayth earned a Doctor of Spiritual Studies degree from the Emerson Theological Institute. | 05/05/15 | 12/31/18 | Governor |
| Beata Draga-Morcós, Public Member , has been chief executive officer at the Black American Political Association of California since 2008. She was director of operations at Worldtone Dance from 2005 to 2008. | 05/19/15 | 12/31/18 | Governor |
| *BPC § 2570.19(f) authorizes appointees at the end of their term to serve until successors are appointed. | | | |

Committees

Because members of the licensing boards often have professional responsibilities outside of their board responsibilities, they are usually only able to meet a few times a year. As a result, many use smaller committees that are able to meet more frequently, explore issues in-depth, and then make recommendations to the full boards at the public board meetings. Some committees are specified in statute, while others are established as needed by the boards.

The CBOT currently has four standing committees and one ad hoc committee. It uses committees to address policy issues, issues referred by the public or licensees to the CBOT, or recommendations by CBOT staff. While the CBOT's committees are not specified in statute, they are described in greater detail in the CBOT's *Guidelines and Procedures Manual*. The manual, among other things, specifies committee rules, authorizes the CBOT and the committees

to establish ad hoc committees, and requires the committees to comply with the requirements of the Bagley-Keene Open Meetings Act.

The CBOT's current committees include the following:

- **Administrative Committee:** The committee meets as needed to provide guidance to staff on budgeting and organizational issues. It has three members, the board president, vice president, and the executive officer.
- **Education and Outreach Committee:** The committee's purpose is to develop consumer and licensee outreach projects, such as the CBOT's newsletter, website, and e-government initiatives. Committee members may represent the CBOT at meetings, conferences, or when invited by outside organizations. It is composed of four members, including at least one board member.
- **Legislative/Regulatory Affairs Committee:** The committee's purpose is to monitor legislation and regulations impacting the CBOT and provide information and make recommendations to the CBOT and the other committees. It is composed of four members, including at least one board member.
- **Practice Committee:** The committee's purpose is to provide recommended responses to practice issues submitted by licensees and consumers; provide guidance to staff on continuing competency audits; provide recommendations on practice-related regulatory amendments; and provide recommendations to staff on revisions to applications and forms. It is composed of at least four members, including at least one board member, and must represent a variety of work settings.
- **Enforcement Committee:** The enforcement committee is the only ad-hoc committee. The purpose of the committee is to improve the CBOT's enforcement activities, including developing and reviewing policies, regulations, forms, and guidelines. The members do not review individual enforcement cases. It is composed of four members, including at least one board member.

Fiscal and Fund Analysis

The CBOT is a special fund agency, which means it receives no general funds.⁹ It is fully funded through the revenues the CBOT deposits into the Occupational Therapy Fund.¹⁰ While the CBOT has no statutorily mandated minimum reserve level, many regulatory boards are expected to maintain a reserve of operating funds to cover unexpected costs, such as litigation or administrative Pro Rata costs.¹¹ The CBOT currently estimates a reserve of 10.5 months. The last loan the CBOT made to the General Fund was in FY 2009/10 for \$2 million. The loan was fully satisfied in FY 2013/14 and included \$82,000 in interest.

⁹ For more information related to state funds, see Department of Finance, *Glossary of Budget Terms*, http://www.dof.ca.gov/budget/resources_for_departments/budget_analyst_guide/glossary.pdf.

¹⁰ BPC § 2570.22.

¹¹ See Government Code § 11270 and BPC § 201.

However, the CBOT has at several times exceeded its statutory 24-month maximum reserve level¹² since FY 2004/05. In response, in January 2007 the CBOT switched its \$150 renewal fee schedule from annual to biennial, halving the largest portion of its revenues, resulting in a drop of about \$500,000 in revenue each FY.¹³

The CBOT reports that this has resulted in an operational deficit: revenues are lower than the authorized budget (an average difference of approximately \$277,000 since FY 2008/09). While this helped when the fund was over the limit, the CBOT notes that it now intentionally spends a little less than the authorized budget to revert expenditures back into the fund (an average of approximately \$172,000 since FY 2008/09).

In addition, in FY 2015/16, the CBOT submitted a Budget Change Proposal (BCP) for additional staff. The BCP was approved, authorizing 7.5 additional staff positions (totaling 15.2 authorized positions effective for FY 2016/17). As a result of the approval, the CBOT's authorized budget increased by an additional \$717,000 for FY 2016/17 and \$653,000 for FY 2017/18 and onward. The projected potential deficit is noted below. For further discussion, see Issue #1 regarding the fee increase under Current Sunset Review Issues.

| Fund Condition (dollars in thousands) | | | | | | |
|--|----------------|--------------|----------------|----------------|----------------|----------------|
| | FY 12/13 | FY 13/14 | FY 14/15 | FY 15/16 | FY 16/17* | FY 17/18* |
| **Beginning Balance | 611 | 1,157 | 922 | 2,982 | 3,002 | 2,035 |
| Revenues and Transfers (excluding loans and interest) | 1,144 | 1,120 | 1,259 | 1,305 | 1,371 | 1,411 |
| †Loan Repayments | 640 | -- | 2,000 | -- | -- | -- |
| Interest on Loans | 89 | 82 | -- | -- | -- | -- |
| Total Revenues and Transfers | 1,784 | 1,202 | 3,259 | 1,305 | 1,383 | 1,383 |
| Total Resources | 2,395 | 2,359 | 4,181 | 4,287 | 4,385 | 3,449 |
| Budget Authority | 1,372 | 1,520 | 1,360 | 1,437 | 2,299 | 2,241 |
| Structural Deficit | -228 | -400 | -78 | -132 | -928 | -830 |
| ‡Expenditures | 1,241 | 1,435 | 1,198 | 1,285 | 2,338 | 2,304 |
| Actual Deficit (less loans) | -97 | -315 | +61 | +20 | -- | -- |
| Fund Balance | \$1,154 | \$922 | \$2,983 | \$3,002 | \$2,066 | \$1,085 |
| Months in Reserve | 9.7 | 9.2 | 27.9 | 15.4 | 10.6 | 5.8 |

* Updated by the DCA Budget Office to reflect the 2017/18 Governor's Budget.
 ** Includes prior year adjustments.
 † Loan and interest were issued at the end of FY13/14, which may have caused them to be reported in different FYs.
 ‡ Includes direct draws from SCO, Fi\$cal, Statewide Pro Rata, and reimbursements which may not be accounted for in the budget authority.

Note: While this table includes information from the CBOT's 2016 Sunset Review Report, it also includes updated numbers from the DCA which differ from those it provided to the CBOT at the time the CBOT wrote the report.

¹² See BPC § 128.5.

¹³ As noted in the CBOT's 2012 Sunset Review Reports and 2016 Sunset Review Reports.

The CBOT's total program component expenditures for the last four FYs totaled an approximate annual average of \$1.3 million. The averages for the individual program components are as follows:

- The enforcement program averaged \$783,400, which is 59.6% of the average total.
- The licensing program averaged \$112,800, which is 8.6% of the average total.
- The administration program averaged \$114,900, which is 8.7% of the average total.
- The DCA Pro Rata costs averaged \$239,600, which is 18.2% of the average total.

Since FY 2008/09, the CBOT's Pro Rata expenditures have steadily increased and, since FY 2009/10, include BreEZe costs. In addition, since FY 2012/13, the CBOT's annual Pro Rata expenditures have been greater than those of either of the administrative or licensing programs.

| Expenditures by Program Component (dollars in thousands)* | | | | | | | | |
|--|-------------------|-----------------|-------------------|-----------------|-------------------|-----------------|-------------------|------------------|
| Program | FY 2012/13 | | FY 2013/14 | | FY 2014/15 | | FY 2015/16 | |
| | Personnel | OE&E | Personnel | OE&E | Personnel | OE&E | Personnel | †OE&E |
| Enforcement | 386.2 | 383.3 | 428.4 | 532.3 | 398.1 | 297.3 | 389.1 | 319.0 |
| Licensing | 123.9 | 49.1 | 126.0 | 40.4 | 117.1 | 43.0 | 114.5 | 54.0 |
| Administration | 94.7 | 37.6 | 92.4 | 29.6 | 85.9 | 31.5 | 83.9 | 39.0 |
| DCA Pro Rata | -- | 190.7 | -- | 206.7 | -- | 246.1 | -- | 315.0 |
| TOTALS | 604.9 | 660.7 | 646.8 | 809.0 | 601.1 | 618.0 | 587.5 | 727.0 |

* Actual expenditures. Does not include reimbursements.
† This column differs from the CBOT's 2016 Sunset Review Report because the DCA Budget Office initially distributed the Pro Rata cost among all OE&E categories.

Note: While this table includes information from the CBOT's 2016 Sunset Review Report, it also includes updated numbers from the DCA which differ from those it provided to the CBOT at the time the CBOT wrote the report.

The CBOT also provided the following expenditures for the BreEZe program:

| BreEZe Expenditures (dollars in thousands) | | | | | | | |
|---|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| FYs 09-11 | FY 12/13 | FY 13/14 | FY 14/15 | FY 15/16 | FY 16/17 | FY 17/18 | FY 18/19 |
| Actual | Actual | Actual | Actual | Actual | Budget | Budget | Budget |
| \$24 | \$15 | \$33 | \$64 | \$137 | \$133 | \$132 | \$127 |

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

Fees

The Practice Act provides for the following fees relating to OT and OTA licenses¹⁴:

- An initial license fee not to exceed \$150 per year.
- A renewal fee not to exceed \$150 per year.
- An application fee not to exceed \$50.
- A late renewal fee that is 50% of the renewal fee in effect on the date of the renewal of the license, but not less than \$25) nor more than \$150.¹⁵

¹⁴ BPC § 2570.16

- A limited permit fee.
- A fee to collect fingerprints for criminal history record checks. While the CBOT collects some of these fees, the CBOT passes them through to the law enforcement agencies.
- A retired license fee of \$25.¹⁶

The Practice Act also authorizes the CBOT to establish the requirements for renewal. As noted earlier, the CBOT has switched to a biennial renewal cycle. In order to avoid large surges of renewals at a single time, it also bases renewal dates on an applicant's birth month. However, this varies the duration of the initial license, resulting in a minimum initial license period of 7 months and a maximum of 30 months. Therefore, to ensure each licensee pays an equitable initial fee, the CBOT prorates the initial license fee to match the number of months over or under 12 months (from \$43 - \$188).

The fees and procedures established by the CBOT are published under California Code of Regulations (CCR), tit. 16, § 4130. The following table describes the fees in more detail:

| Fee Schedule and Revenue (revenue dollars in thousands) | | | | | | | | |
|--|----------------|------------------|------------------|------------------|------------------|------------------|-------------|---------------|
| | Current Amount | Statutory Limit | FY 12/13 Revenue | FY 13/14 Revenue | FY 14/15 Revenue | FY 15/16 Revenue | Total | % of Total |
| Admin Services | | | | | | | | |
| OT Dup Lic | 15 | 25 | 2 | 2 | 2 | 2 | 8 | 0.18% |
| †OTA Dup Lic | 15 | 25 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| †Cite/Fine FTB | 50-5,000 | 5,000 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| Cite/Fine Collected | 50-5,000 | 5,000 | 32 | 29 | 36 | 16 | 113 | 2.47% |
| | | Sub Total | 34 | 31 | 38 | 18 | 121 | 2.65% |
| Initial License/App | | | | | | | | |
| OT Initial License | 43-188 | 150 | 100 | 101 | 109 | 117 | 427 | 9.35% |
| OTA Initial License | 43-188 | 150 | 27 | 32 | 34 | 43 | 34 | 0.74% |
| OT Limited Permit | 75 | - | 4 | 4 | 3 | 3 | 14 | 0.31% |
| OTA Limited Permit | 75 | - | 2 | 2 | 1 | 1 | 6 | 0.13% |
| †/‡OT retired | 25 | 25 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| †/‡OTA retired | 25 | 25 | 0 | 0 | 0 | 0 | 0 | 0.00% |
| ‡OT App fee | 50 | 50 | 0 | 0 | 50 | 55 | 105 | 2.30% |
| ‡OTA App fee | 50 | 50 | 0 | 0 | 15 | 20 | 35 | 0.77% |
| | | Sub Total | 133 | 139 | 212 | 239 | 723 | 15.83% |
| Renewals | | | | | | | | |
| OT Inactive | 25 | 150 | 10 | 10 | 10 | 9 | 39 | 0.85% |
| OTA Inactive | 25 | 150 | 2 | 2 | 2 | 1 | 7 | 0.15% |
| *OT Active | 150 | 300 | 717 | 758 | 783 | 794 | 3052 | 66.81% |
| *OTA Active | 150 | 300 | 126 | 136 | 153 | 163 | 578 | 12.65% |
| OT Delinquent | 75 | 75 | 13 | 13 | 12 | 14 | 52 | 1.14% |
| OTA Delinquent | 75 | 75 | 2 | 2 | 2 | 2 | 8 | 0.18% |
| | | Sub Total | 858 | 921 | 962 | 983 | 3724 | 81.52% |

¹⁵ BPC § 163.5

¹⁶ BPC § 2570.17

| | | | | | | | |
|---|-------|------|------|------|------|------|------|
| | Total | 1025 | 1091 | 1212 | 1240 | 4568 | 100% |
| * Statutory maximum is \$150 per year; currently \$150 is charged every other year. | | | | | | | |
| † This revenue category results in less than \$1,000 in revenue. | | | | | | | |
| ‡ This revenue category is new and may only show recent revenues. | | | | | | | |

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

Board Staff

Per the CBOT's organizational chart for FY 2015/16, the CBOT had 7.7 authorized positions. The CBOT's recently approved BCP added 6.0 additional enforcement staff and 1.5 additional licensing staff, totaling 15.2 authorized positions for FY 2016/17. The CBOT states that the positions are needed to assist with its licensing and enforcement workload (discussed further under each respective section). The CBOT is in the process of filling the new vacancies.

The CBOT reports that the two-year transition to BreEZe also contributed to the increased workload. It writes in its *2016 Sunset Review Report* that staff continues to be heavily impacted by BreEZe workload issues despite the program's implementation in January of 2016. For instance, the CBOT states that staff continues to identify BreEZe system and data errors and is required to develop and test system releases.

Licensing

In general, licensing programs serve to protect the consumers of professional services and the public from undue risk of harm. The programs require anyone who wishes to practice a licensed profession to demonstrate a minimum level of competency. Requirements vary by profession, but usually include specific education, examinations, and experience.

The Practice Act requires that an applicant seeking an OT or OTA license must meet the following competency requirements¹⁷:

- Complete the academic requirements of an approved and accredited educational program for OTs or OTAs;
- Complete two years of postgraduate training;
- Complete a period of supervised fieldwork experience; and
- Pass an entry-level certification examination.

In addition, many programs have specific age and moral character requirements. For OTs and OTAs, the Practice Act also requires that applicants meet the following fitness to practice requirements:

- The applicant is over 18 years of age.
- The applicant is not addicted to alcohol or any controlled substance.
- The applicant is in good standing and has not committed acts or crimes constituting grounds for denial of licensure under BPC § 480.¹⁸

¹⁷ BPC § 2570.6.

¹⁸ BPC § 480 authorizes a board to deny a license regulated by the BPC if the applicant has been convicted of a crime, done any specified act, (if the crime or act is substantially related to the qualifications, functions, or duties of

As a result, applicants must certify that they meet the requirements, including that they have not been disciplined by a licensing body or employer and have not committed acts or crimes substantially related to the practice. If an applicant does not meet the requirements, the applicant must disclose the disciplinary or criminal acts.

The CBOT requires applicants to submit proof in the form of primary source documentation, such as sealed educational transcripts, vendor-issued proof of passage of examination, and certified court documents. Applicants also submit fingerprints to the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) for a background check. The CBOT uses the records to determine the existence of relevant convictions.

It also reports that it compares all primary source documents against an applicant's disclosure statements to determine the applicant's honesty during the application process (and renewal process for renewing licensees).

License Processing

The CBOT's performance target for its licensing program is to respond to an application with a written approval or explanation within 30 days of receipt.¹⁹ The CBOT reports that it generally meets this timeframe and takes approximately 22-27 days to provide written notice.

The CBOT's average time to fully process either an OT or OTA application was 60 days. When looking at OTs, the average processing time was 23 days for completed applications and 60 days for incomplete applications. For OTAs, the average processing time was 19 days for completed applications and 76 days for incomplete applications.

When the CBOT is at risk of not meeting its 30-day performance target, it states that it has been able to redirect staff resources. The CBOT states this is usually due to short surges in application submissions around graduation periods. As a result, it believes that any growth in pending applications is manageable. In addition, the CBOT's approved BCP authorizes an additional 1.5 licensing office technician positions for FY 2016/17.

Still, the CBOT writes that it will continue to monitor its processing times. If it is not able to meet the 30-day performance target, it will take steps to improve them, including seeking additional staff through the BCP process or considering legislative or regulatory changes.

School Approvals

The Practice Act requires applicants for an OT or OTA license to complete the academic requirements of an approved and accredited educational program. Specifically, BPC § 2570.6(b) requires the educational program to meet the following:

- 1) Be approved by the CBOT;

the relevant business or profession), or knowingly makes a false statement of fact that is required to be revealed in the application for the license.

¹⁹ CCR, title 16, § 4112

- 2) Be accredited by the AOTA’s Accreditation Council for Occupational Therapy Education (ACOTE), accredited or approved by the AOTA’s predecessor organization, or approved by AOTA’s Career Mobility Program; and
- 3) The curriculum must meet the content standards required by the ACOTE or the relevant AOTA accreditation agency, including specified course subjects (BPC § 2570.6(b)(2)-(3)).

While the Practice Act requires that educational programs be accredited by the ACOTE and approved by the CBOT, the CBOT does not separately approve, review, or remove schools. In practice, the CBOT approves accredited schools by default.

Examination

The Practice Act requires all applicants to take an entry-level certification examination, such as the one administered by the NBCOT. According to the CBOT, the NBCOT is the same vendor used by all other states. The CBOT is not involved in the administration or development of the NBCOT examination.

The NBCOT examination is a computer-based test that is administered at Prometric Test Centers. The examination application costs the same for OTs and OTAs: \$515 for the online exam and \$555 for the written exam. All applicants must also pay a \$40 fee to transfer their scores to the CBOT. The full fee schedule can be found on the NBCOT’s website: <http://www.nbcot.org/fees>.

The application for the NBCOT examination includes its own moral character component. It requires a background check and primary source documentation, such as school transcripts, which are in addition to and duplicative of what applicants are required to provide to the CBOT.

The following table shows exam statistics provided by the NBCOT:

| NBCOT First Time Examination Statistics (calendar years) | | | | |
|---|----------------------------|---------------------------|------------------------------|-----------------------------|
| OTs | National Candidates | National Pass rate | California Candidates | California Pass rate |
| 2012 | 4931 | 86% | 339 | 85% |
| 2013 | 5411 | 84% | 355 | 84% |
| 2014 | 5758 | 86% | 379 | 85% |
| 2015 | 6067 | 87% | 411 | 84% |
| OTAs | National Candidates | National Pass rate | California Candidates | California Pass rate |
| 2012 | 3806 | 81% | 116 | 80% |
| 2013 | 4354 | 84% | 166 | 80% |
| 2014 | 4607 | 82% | 179 | 77% |
| 2015 | 4949 | 79% | 257 | 72% |

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

The Practice Act also authorizes the CBOT to require examination subjects in addition to the NBCOT examination. However, it does not include additional examinations such as a state-specific ethics or law exam.

Continuing Competency

Professions and practices can change over time. For instance, new technology, research, or ethical requirements may increase the level of minimum competence needed to protect consumers. Therefore, some licensing boards require licensees to complete additional training or classes to maintain minimum competence post-licensure. This is usually accomplished through continuing education/continuing competence requirements at the time of renewal.

The Practice Act authorizes the CBOT to do so.²⁰ The CBOT has exercised this authority and requires both OTs and OTAs licensees to complete 24 professional development units (PDUs) prior to renewal.²¹

Licensees can earn PDUs through a variety of means, such as academic course work, attending board meetings and activities, or mentorship. The CBOT also accepts programs and activities sponsored by the OTAC or AOTA, including continuing education courses, and many of the activities listed overlap with those listed for renewal of the NBCOT certification.

Rather than require licensees to submit certificates of completion at the time of renewal, the CBOT audits a random sample of renewing licensees to determine compliance with the requirement. However, the CBOT does not approve, audit, or review the individual course providers. The CBOT’s internal performance target is to audit 10-15% of its active renewals. Since FY 2013/14, the CBOT has audited an average of approximately 7.78% renewals per FY.

According to the CBOT, it has conducted a total of 2,074 audits to since FY 12/13, which is an average of 518.5 audits per year. Of those 2,074 audits, 217 licensees were referred to the CBOT’s Enforcement Unit for either not responding to the audit or for failing to demonstrate completion of the requirements. Of the 217 cases, 151 licensees were issued a citation.

| Continuing Competence Audit Data | | | | | |
|---|-----------------|----------------|------------------|-------------------|-----------------|
| Fiscal Year | Renewals | Audited | % Audited | Raw Failed | % Failed |
| 2012/13 | 6078 | 479 | 7.88% | 50 | 10.4% |
| 2013/14 | 6628 | 501 | 7.56% | 45 | 8.98% |
| 2014/15 | 6911 | 746 | 10.79% | 83 | 11.13% |
| 2015/16 | 7008 | 348 | 4.97% | 39 | 11.21% |
| Total | 26625 | 2074 | 7.73% | 217 | 10.46% |
| Average | 6656 | 519 | 7.80% | 54 | 10.46% |

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

²⁰ BPC §2570.10(b).

²¹ CCR, tit. 16, §4161.

Enforcement

The CBOT has the authority to investigate violations of the Practice Act, issue citations, deny or take disciplinary action against a license (e.g. probation, suspension, or revocation), refer cases for criminal prosecution, and file for other legal actions, such as injunctions or restitution.

As with other licensing boards, the CBOT relies on information it receives to initiate investigations, mainly complaints and information drawn from submitted documentation (e.g. a delinquent renewal faxed from an employer's fax machine). When the CBOT opens a complaint for potential violations based on inaccuracies or other issues observed by staff, it is considered an internal complaint.

From FYs 2013/14 to 2015/16, the CBOT received an average of 504 complaints per FY (1,512 total). The majority of the CBOT's complaints are internal complaints. The breakdown of the categories is as follows:

- Complaints from the public averaged 37 per FY (110 total, or 7.3% of all complaints).
- Complaints from licensee and professional groups averaged 4 per FY (13 total, or 0.9% of all complaints).
- Complaints from governmental agencies averaged 5 per FY (16 total, or 1.1% of all complaints).
- Complaints designated as "other," which are mostly internal complaints and some anonymous complaints, averaged 458 per FY (1373 total, or 90.8%).

However, for FY 2015/16 the CBOT only reported a total of 285 complaints received, 253 of which were complaints designated as "other." Both are significantly lower than in prior FYs. The CBOT reports that this was again due to BreEZe implementation. Because staff was unavailable, the CBOT made the following adjustments:

- 1) Staff suspended opening internal complaints against licensees for failing to provide notice of an address change.
- 2) Staff increased the threshold number of days before opening internal complaints against delinquent renewals for unlicensed practice from 14 to 30 days.
- 3) Staff reduced the number continuing competency audits performed.

The CBOT writes that BreEZe also impacted investigations. At the end of FY 2015/16, the number of pending investigations increased compared to the prior FY, despite the number of investigations assigned decreasing. At the end of FY 2014/15 the CBOT had assigned 737 cases and had 326 investigations pending. By the end of FY 2015/16, it had assigned 419 cases and had 509 investigations pending.

However, as noted above, the CBOT now has six new enforcement positions in July 2016. The CBOT is currently recruiting and anticipates four analyst positions will be filled by December

2016 and the remainder by March or April 2017. With the new staff, the CBOT plans to reduce the backlog by December 2017.

Case Resolution

The primary purpose of enforcement is to protect consumers. However, while there are options for immediately suspending a licensee's ability to practice, they are reserved for egregious cases. Further, due process requires that licensees are not punished before being provided the opportunity for a fair hearing. Therefore, timely resolution of complaints and enforcement actions both decreases the risk to consumer safety and increases fairness to licensees.

To help ensure the timely resolution of enforcement cases for all healing arts boards, the DCA established the Consumer Protection Enforcement Initiative (CPEI).²² The CPEI is a set of enforcement guidelines and administrative improvements meant to help boards maintain enforcement timelines between 12 to 18 months (365 to 540 days).

The CBOT meets its targets except Performance Measure 4 (PM4), which has a target of no more than 540 days to complete the entire enforcement process for cases referred for formal discipline. Most DCA boards have difficulty meeting PM4. Over the last three FYs, the CBOT averaged 566 days to close formal discipline cases.

The average number of days is high due to FYs 2013/14 and 2014/15:

- In FY 2013/14, the cases closed averaged a total of 626 days, with cases in Q1 averaging a total of 579 days (but August alone averaged 996 days) and cases in Q4 averaging 997 days.
- In FY 2014/15, the cases closed averaged a total of 592 days, with cases in Q2 averaging 765 days Q3 averaging 1,452 days, and Q4 averaging 1,090 days.

The CBOT also notes that, overall, the number of disciplinary actions has decreased since its 2012 *Sunset Review Report* (14 total license revocations/surrenders and 18 new probationers in the last four FYs compared to 12 revocations/surrenders and 38 probationers in the prior three FYs). The CBOT again attributes this to BreEZe.

Cite and Fine

The general provisions of the BPC authorize the entities within the DCA to establish a system for issuing citations.²³ The CBOT uses its cite and fine authority to address violations that warrant some action but do not rise to the level of formal discipline.

²² http://www.dca.ca.gov/about_dca/cpei/overview.pdf.

²³ BPC §§ 125.9, 148.

The CBOT’s established fines range from \$50 to \$5,000.²⁴ It reports that many citations issued are minor, involving address change reporting violations or continuing competence. Fines assessed for minor violations usually range from \$50 to \$600.

Larger fines are reserved for more substantial violations. These include unlicensed practice for over one year, fraudulent billing, and violations that carry a risk of patient harm.

In the last four FYs, the CBOT issued an average of 163 citations (650 total). Consistent with the other enforcement statistics, FY 2015/16 the CBOT issued a total of 52 citations, lower than the average and significantly lower than the number issued in FY 2014/15 (296).

Over the last four FYs, the CBOT’s average citation fine pre-appeal was \$185. The post-appeal fine amount averaged \$174.

| Top Five Violations | |
|---------------------|---|
| Rank | Violation |
| 1 | Unprofessional conduct (incompetence, gross or repeated negligence, conviction for practicing medicine) |
| 2 | Unlicensed practice (practicing with an expired license or with an inactive license) |
| 3 | Failure to complete continuing competence requirements |
| 4 | Failure to disclose criminal convictions or disciplinary action taken by another state |
| 5 | Failure to provide a timely address change |

Note: This table includes information from the CBOT’s 2016 Sunset Review Report.

As an administrative agency, the CBOT’s disciplinary actions are tied to its authority to discipline a license. Therefore, the CBOT typically collects fines by withholding the offending licensee’s renewal until the fine is paid.

However, against licensees who choose not to renew or unlicensed individuals, the CBOT’s authority is limited. Therefore, the CBOT utilizes the Franchise Tax Board’s (FTB) Intercept Program to attempt collection of any outstanding fines. Under this program, the FTB will seize tax refunds, lottery winnings, and cash claims for unclaimed property on the CBOT’s behalf until the fines are paid.²⁵

| FTB Intercept Program | | | |
|---|------------|------------|------------|
| | FY 2013/14 | FY 2014/15 | FY 2015/16 |
| Number of citations with fine amount unpaid | \$4701 | \$5813 | \$3975 |
| Citations total unpaid | 24 | 72 | 5 |

²⁴ CCR, tit. 16, §§ 4141(a)-(b).

²⁵ GOV § 12419.5 authorizes the State Controller to offset fines owed to a state agency by a person or entity against any amount owed to the person or entity by the state (i.e. tax refunds from the FTB, winnings in the California State Lottery, or a claim for unclaimed property).

| | | | |
|--------------------------------------|-------|----------|----------|
| Number of citations referred to FTB | 4 | 14 | 1 |
| Number of citations collected by FTB | 9 | 7 | 4 |
| Dollars intercepted by FTB | \$750 | \$350.36 | \$249.64 |

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

Because the CBOT finds that practicing without a license or on an expired license is common, it has amended its cite and fine regulations to increase the penalty for practicing without a license and practicing on an expired license for more than a year. Instead of a citation, the CBOT will file a statement of issues (in a case involving an unlicensed individual) or in an accusation (in a case involving a licensee).

The CBOT has issued citations for unlicensed practice as follows:

| Citations | |
|-------------|--------|
| Fiscal year | Issued |
| 2012-13 | 14 |
| 2013-14 | 13 |
| 2014-15 | 24 |
| 2015-16 | 11 |

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

The minimum fine assessment was \$125 and the maximum was \$5,000. The CBOT also investigated three unlicensed practice matters that resulted in criminal convictions.

Cost Recovery

The CBOT reports that it requests cost recovery in all cases in which it is authorized to seek cost recovery. Potential cases for recovery are cases in which disciplinary action has been taken based on violation of the license practice act.²⁶

| Cost Recovery (dollars in thousands) | | | | |
|--------------------------------------|------------|------------|------------|------------|
| | FY 2012/13 | FY 2013/14 | FY 2014/15 | FY 2015/16 |
| Total Enforcement Expenditures | 106 | 394 | 151 | 137 |
| Potential Cases for Recovery | 3 | 12 | 4 | 6 |
| Cases Recovery Ordered | 1 | 8 | 4 | 3 |
| Amount of Cost Recovery Ordered | \$3 | *\$36 | \$17 | \$6 |
| Amount Collected | \$7 | \$11 | \$12 | \$19 |

*Cost recovery reported in the 2013-14 Annual Report was \$28,730.

Note: This table includes information from the CBOT's 2016 Sunset Review Report.

²⁶ BPC § 125.3

Public Information and Consumer Outreach

As a public agency, the CBOT is required to keep the public informed of board activities and provide the opportunity for engagement and input. The CBOT provides the following methods for informing the public:

- **The CBOT website:** The CBOT uses its website to provide information, forms, applications, laws, proposed and adopted regulations, board meeting materials and minutes, board and committee meeting webcasts, newsletters, and important notices. The CBOT also has a listserv where members of the public can sign up for email notices.
- **Webcasting:** CBOT meetings that have been webcasted are available accessible on CBOT's website and YouTube. However, the CBOT rarely webcasts its meetings (four total in the last six years), citing scheduling issues and limited DCA resources.
- **Social media:** the CBOT's Facebook page is used to announce updates and it uses Twitter to communicate special events or activities.
- **Phone and Email:** the CBOT reports that it responds when contacted.
- **Educational brochures and newsletters:** The CBOT reports that its new 2016-2019 Strategic Plan prioritizes education and outreach. It plans to develop brochures and newsletters describing the practice and regulation of occupational therapy and provide updated information. It will also increase its use of social media.
- **Personal Appearances:** In compliance with travel restrictions, the CBOT makes annual speaking appearances at the OTAC conferences. The CBOT provides practice information, disseminates brochures, and staffs an informational booth.

The CBOT plans to keep its meeting information (*e.g.* agenda, meeting materials, minutes) on its website indefinitely. Draft minutes are made available to the public on the website after the meeting materials are sent to the board members. The CBOT's policy is to post the final minutes within two weeks of approval.

Additional Background Information

For more detailed information regarding the responsibilities, operation and functions of the CBOT, please refer to the CBOT's 2016 *Sunset Review Report*. The report is available on the Assembly Committee on Business and Profession's website at:

<http://abp.assembly.ca.gov/reports>.

PRIOR SUNSET REVIEWS: CHANGES AND IMPROVEMENTS

The CBOT was last reviewed in 2013. A total of 10 issues were raised by the Committees at that time. Below are actions which have been taken over the last four years to address these issues. Those that were not addressed and may still be of concern are discussed further under the Current Sunset Review Issues section.

Recommendation 1: The CBOT should inform the Committee of the reason that they have been unsuccessful in webcasting meetings. The Committee recommends that the CBOT utilize webcasting at future meetings in order to allow the public the best access to meeting content, activities of the CBOT and trends in the profession.

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

Recommendation 2: Due to the high percentage of dissatisfaction with the CBOT's assistance, the Committee requests that the CBOT provide additional training to its staff regarding customer relations and complaint resolution techniques.

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

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

Recommendation 3: The Committee recommends that the CBOT provide citation information on the licensee's record in WLL and/or post the citation information on the CBOT's Disciplinary Action section of its website.

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

Since the BreZE system launched in January 2016, CBOT staff has been posting PDF copies of citations on license records as they are being issued. CBOT staff plans to go back and incorporate previously issued citations on license records, consistent with the CBOT's citation retention schedule set forth in 16 CCR Section 4145, as time and resources permit. This task will

be aided by the recent augmentation of six additional positions the CBOT was authorized through the BCP process.

Recommendation 4: The Committee recommends that the CBOT create a plan for purchasing the continuous query service which may include sponsoring legislation to address how the cost should be covered.

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

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

The CBOT has proposed legislation adding the authority to collect the NPDB query fee.

Recommendation 5: The Committee recommends that the CBOT outline a plan to include a jurisprudence and/or ethics course as a required continuing education course for its licensees.

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

Recommendation 6: 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 CBOT provide an explanation for their high percentage of stipulated settlements. Additionally, the CBOT should indicate if any of the cases that were resolved via stipulated settlements settled for lower standards than the CBOT’s disciplinary guidelines require.

CBOT Response: The disciplinary guidelines are established with the expectation that Administrative Law Judges hearing a disciplinary case, or proposed settlements submitted to the

board for adoption will conform to the guidelines. If there are mitigating factors, such as a clear admission of responsibility by the licensee early on in the process, clear willingness to conform to board-ordered discipline, or other legal factors, a decision or settlement might vary from the guidelines.

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

Recommendation 7: The Committee recommends that the CBOT 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 CBOT activities. As such, the Committee recommends that the CBOT consult with DCA to clarify what type of travel is permitted.

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

Recommendation 8: The CBOT should make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses. The CBOT 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.

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

The Board complies with BPC § 115.5 and expedites the licensure application process for applicants who provide evidence they are married to, or in a domestic partnership or other legal

union with an active duty member of the Armed Forces who is assigned to a duty station in California. Standard operating procedures for the CBOT to process and review an application for licensure are that within 30-days of receipt of the application, the applicant is provided written notice whether the application is approved or deficient (16 CCR section 4112).

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

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

Recommendation 9: The CBOT should draft language and submit it to the Committee in order that the Committee can understand specifically how the CBOT desires to expand the definition.

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

Recommendation 10: The Committee requests that the CBOT provide them with additional information, e.g. data from the ACOTE, about the advanced practice requirements and the minimum education standards.

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

Major Changes:

- In February 2013, the CBOT moved its headquarters to a different suite within its building. Its new address is 2005 Evergreen Street, Suite 2250, Sacramento, CA 95815.
- Successfully implemented the BreEZe online licensing database in January 2016.
- Increased staff by 7.5 positions to assist in the licensing and enforcement programs, effective July 1, 2016.
- Adopted its *2016-2019 Strategic Plan*.

CURRENT SUNSET REVIEW ISSUES FOR THE CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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

BUDGET ISSUES

ISSUE #1: *Will the CBOT's proposed regulatory fee increases support the health of its long-term fund condition? Are additional statutory changes required?*

Background: As stated above, the CBOT's new budget authority significantly increases its long-standing and intentional budget imbalance. Its recent fund condition projections indicate an insufficient fund reserve before the end of FY 2018/19. In response, the CBOT has established several new fees for services it provides.

In addition, it has proposed regulations to increase biennial renewal fees (its main source of revenue) and other licensing and service fees to meet its new budget authority and potential expenditure needs. The initial license, renewal, and inactive renewal fees will at first increase to \$220, then to \$270 in 2021. The pending fee increases are as follows:

| Proposed Regulatory Fee Increases | | |
|-----------------------------------|---------|----------|
| | Current | Proposed |
| OT Initial License | \$150 | \$220 |
| OT Biennial Renewal | \$150 | \$220 |
| OT Inactive Renewal | \$25 | \$220 |
| OT Initial License in 2021 | - | \$270 |
| OT Biennial Renewal in 2021 | - | \$270 |
| OT Inactive Renewal in 2021 | - | \$270 |
| OTA Initial License | \$150 | \$180 |
| OTA Biennial Renewal | \$150 | \$180 |
| OTA Inactive Renewal | \$25 | \$180 |
| OTA Initial License in 2021 | - | \$210 |
| OTA Biennial Renewal in 2021 | - | \$210 |
| OTA Inactive Renewal in 2021 | - | \$210 |
| Delinquent Renewal | \$75 | \$100 |
| Limited Permit | \$75 | \$100 |
| Duplicate License | \$15 | \$25 |

Currently the CBOT charges \$25 for its initial license. However, it has been advised by its legal counsel that it does not have the statutory authority to charge a fee that is different from the active license. Per BPC §§ 462, 701, and 703, healing arts boards the active renewal fee must match the renewal for inactive licenses.

The CBOT also issues a retired license, which is like an inactive license except for the following: (1) the CBOT’s regulations limit a licensee to two applications for a retired license; (2) retired licensees are statutorily exempt from renewal requirements; (3) retired licensees are permitted to use the title of OT as long as it contains the term “retired”; and (4) the initial license fee is set in statute at \$25. Therefore, the CBOT has not proposed increasing the fees for this category.

Staff Recommendation: *The CBOT should discuss its fund projections and fee audits with the Committee and explain whether the new fee structure will generate sufficient revenues to cover its costs. Further, the CBOT should inform the Committee of whether it believes the fee for the inactive license should match the normal renewal fee.*

ADMINISTRATIVE ISSUES

ISSUE #2: *Does the CBOT use its administrative committee to address any ongoing issues?*

Background: The CBOT has reported that it previously struggled with staffing and workload issues. One approach that boards take when dealing with administrative and operational issues is to establish a committee to investigate potential problems, work with staff, and make recommendations to the full board. Committees are more flexible, can meet more often, and can parse out details the full board may not have time to explore.

A committee can also be useful for boards that suffer from information bottlenecks, which can result in a lack of innovation or structural issues that remain unresolved. While daily administration is usually delegated to the EO, a committee can provide board members access to other staff and receive additional input and suggestions.

On the other hand, smaller boards that meet frequently may not benefit as much from committees. Requiring committee recommendations before the full board takes action could hinder efficiency when the board is well informed. Further, boards may have other ways to address these issues, negating the need for committees.

Staff Recommendation: *The CBOT should discuss how it uses its administrative committee to explore ongoing issues and whether it uses any other methods to improve board processes and promote the flow of information to and from the board members.*

LICENSING ISSUES

ISSUE #3: *Should the CBOT require licensees to verify their knowledge of the CBOT’s rules and regulations, either through an attestation in the application or through an educational tool, such as continuing competence courses or an online assessment, to assist with its practice issues?*

Background: The CBOT reports that it spends approximately 59.6% of its budget on enforcement. During the CBOT’s last review in 2012, the CBOT reported that most the

complaints received involved ethical issues, documentation, supervision (or lack thereof), aiding and abetting unlicensed practice, and failing to follow procedural license requirements, such as failing to complete continuing competence requirements or provide a timely address change.

The CBOT's latest report indicates that this is still the case. The CBOT has since tried to address this issue by performing outreach to employers, educational programs, and consumers regarding the importance of verifying licenses online prior to allowing someone to provide services. The CBOT notes, however, that many employers are still not diligent in routinely verifying licenses of employees.

In 2013, the committee staff was concerned about the high number of complaints relating to practice issues. Therefore, staff recommended that the CBOT "outline a plan to include a jurisprudence or ethics course as a required continuing education course for its licensees."

The CBOT's response to this issue as stated in its 2016 *Sunset Review Report* is as follows:

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

Since the current application does not have an attestation, including one that may help incentivize applicants to become familiar with the laws and regulations. However, it may not help applicants and licensees who forget or do not fully understand the requirements.

As noted by committee staff in 2013, one way this could be accomplished is through its continuing competence requirements. However, this would also depend on the availability of providers.

Alternatively, the CBOT could work with DCA's SOLID unit to develop a mandatory training unit for applicants and renewing licensees. Last year, the Board of Professional Engineers, Land Surveyors and Geologists (BPELSG) sought statutory authority to administer an online assessment that would test its licensee's knowledge of regulatory and procedural requirements (see SB 1085 (Roth), Chapter 629, Statutes of 2016).

The assessment was meant to address similar compliance issues the CBOT experiences. The BPELSG noted that the assessment would not increase expenditures and had the potential to significantly decrease enforcement expenditures and cycle times. Further, the assessment had no pass/fail component. It was composed of a series of questions that, if answered incorrectly, would

guide the user to the correct answer. Ideally, the assessment will improve applicant and licensee compliance with regulatory and ethical rules by actively walking them through the questions.

Staff Recommendation: *The Committees may wish to require the CBOT to, at a minimum, amend its application to require an applicant to certify that the applicant has read and understands the laws and regulations. The CBOT should also explain whether requiring a continuing competence course in ethics or developing a non-pass/fail online assessment is feasible (in addition to or instead of an attestation).*

ISSUE #4: *Are there duplicative requirements for out-of-state and military applicants that can be streamlined?*

Background: The CBOT has noted that it does not have true reciprocity with other state licensing boards (recognition of out-of-state license by default). However, it utilizes the same educational and examination requirements as the NBCOT, which is also used by every other state. The only apparent difference is submitting to a separate background check and paying a state licensing fee.

Therefore, the CBOT states that all out-of-state applicants, military or not, must complete the same NBCOT certification requirements as all the other applicants. Further, the CBOT does not participate in the approval or development of NBCOT requirements, it simply accepts them because they are the only option under the statute.

However, an applicant licensed in another state or authorized to practice in the military will have already gone through at least two background checks (the NBCOT and the state license) and paid the fees for the NBCOT exam, background check, and the out-of-state license.

Staff Recommendation: *The CBOT should advise the Committees about the specific differences between the state requirements, the NBCOT requirements, and the known requirements of other states and whether there are any duplicative requirements that can be removed.*

ISSUE #5: *Should the CBOT approve post-professional education courses?*

Background: The CBOT has proposed amending the Practice Act to allow the CBOT to approve post-professional education providers, allowing them to describe their courses as “board approved.” It would require the providers to submit an application and, if approved, renew every three years. It would also require an application for each individual course.

The language would have a delayed implementation date of one year (January 1, 2019) and establish the following fees:

- 1) An initial license fee of \$300.
- 2) A renewal fee of no more than \$550 per renewal.
- 3) A one-time review fee of no more than \$90 for each course reviewed.

Staff Recommendation: *The CBOT should discuss the approximate number of post-graduate training programs seeking approval, the subject areas, the approval criteria, and whether this*

will create disparate education standards between states. The CBOT should also complete the “Fee Bill Worksheet” required by the Committees.

ISSUE #6: What has the CBOT discovered about current workforce trends since implementing its workforce survey?

Background: Due to the redirection of staff during BreZE implementation, the CBOT stated it has not been able to devote resources to exploring workforce issues. Once BreZE was implemented in January 2016, the CBOT was able to incorporate a voluntary survey into the system to collect the following from initial applications and renewals:

- Employment Status.
- Location (zip code) of the primary place they practice and how many hours they work.
- Location (zip code) of any secondary place of practice and how many hours they work.
- Number of years worked.
- Self-employed and if so how many hours they work.
- Whether they have completed another degree beyond the qualifying degree.
- When they plan to retire.
- Areas of current practice.
- Ethnic background and foreign languages spoken.

Staff Recommendation: *The CBOT should discuss how it utilizes the demographic information and provide an update on any trends so far.*

ENFORCEMENT ISSUES

ISSUE #7: Should the CBOT resume checking the National Practitioner Data Bank (NPDB) for adverse actions against applicants and licensees?

Background: Previously, the CBOT looked up applicants and licensees on probation in the NPDB. The NPDB is a federal databank that records adverse actions taken against health care providers. Information includes medical malpractice payments; adverse actions related to licensure, clinical privileges, and professional society membership; DEA controlled substance registration actions; and exclusions from Medicare, Medicaid, and other federal health care programs.

The CBOT reports that it stopped using the NPDB in December 2013 due to the high cost and the lack of reports. However, the cost of using the NPDB has decreased to \$2 per query, making it more a more affordable consumer protection tool.

Staff Recommendation: *The CBOT should resume checking the NPDB and include the \$2 fee in the “Fee Bill Worksheet” required by the Committees.*

TECHNOLOGY ISSUES

ISSUE #8: *Is the CBOT concerned about ongoing BreZE costs and implementation issues?*

Background: The CBOT reports it has successfully transitioned to BreZE in January 2016 as a part of Release 2. However, it also reports that for over two years it redirected staff from other program areas and has had to reduce its workload in licensing, enforcement, workforce development, and outreach. As noted earlier, the CBOT has had to make adjustments to its enforcement processes, including reducing the number of CE audits it performs.

Further, BreZE still requires troubleshooting. Currently, there are currently 12 change requests (System Investigation Requests or SIRs) pending that will add enhancements to the system in future releases. At the time the CBOT submit its report to the Committees, it reported that it has completed a total of 495 SIRs.

To handle the increased workload and address backlogs, the CBOT doubled its staff and plans to increase its fees. However, some boards, such as the Medical Board, utilize dedicated IT/BreZE staff. This prevents the need for redirecting specialized staff for atypical tasks, prevents disruption of workflow, and helps improve individual expertise in BreZE coding and querying. Other boards also contract with the Medical Board to utilize their dedicated BreZE staff (e.g. the Board of Podiatric Medicine and the Physician Assistant Board).

Staff Recommendation: *The CBOT should discuss the ongoing costs and implementation issues related to BreZE, whether the CBOT has considered utilizing staff dedicated to BreZE, and whether dedicated BreZE staff could be helpful and reduce the number of staff needed and need for fee increases.*

ISSUE #9: *Is there a way to disaggregate enforcement data to make it more useful?*

Background: While the CBOT has taken steps to try to meet its CPEI PM4 targets (discussed under Enforcement, above), the PM4 target is difficult to meet because there are other agencies involved and, depending on the complexity and severity of the case, there may be extended periods of time where the case is out of the CBOT's hands. In those cases, the CBOT is limited to communication with the outside agencies and diligently monitoring cases. Therefore, additional data is needed to determine where attention is needed.

Because of the way PM4 data is aggregated by the DCA, it is not useful for determining how long a case stays at a board before it is sent to other agencies further action. For instance, reported data does not currently show how long the AG's office takes to complete cases. However, the latest version of BreZE has the ability to log cases in a way that can distinguish the average length of time the case spends at the desk investigation stage, the DOI, the AG, or the OAH. Incorporating the additional data points into the CPEI performance measures may assist in tailoring specific solutions.

In addition, there are some disciplinary actions that are not tracked in the performance measures, such as subsequent disciplinary actions. Subsequent disciplinary actions are actions taken against a licensee who is already subject to discipline, such as a probationer.

Staff Recommendation: *The CBOT should discuss whether it is currently possible to disaggregate enforcement data and, if not, whether the CBOT can work with other boards and the DCA to develop methods to do so. The CBOT should also discuss whether there are other disciplinary actions that should be tracked to provide a more accurate depiction of workload.*

ISSUE #10: *Should the CBOT use other technologies the DCA might have to improve submission compliance and processing times for primary source documentation?*

Background: Many boards have issues obtaining primary source documentation from outside organizations, such as certifying entities, schools submitting transcripts, and CE providers. One solution may be to utilize new tools for submitting documents to the board.

For instance, the DCA has had an online storage system, or “cloud” storage, that boards can use for document submission and distribution. Currently, a board can use the DCA cloud to provide board members lengthy meeting materials to save on postage and time. The new Executive Officer of the Board of Registered Nursing recently proposed an innovative solution to ease the receipt of information from third-party sources by allowing them to directly upload materials directly into a cloud that the DCA manages.

Staff Recommendation: *The CBOT should discuss whether it has considered using the DCA's cloud or other technology tools for primary source document submissions.*

ISSUE #11: *Should the CBOT utilize additional survey types to improve its survey response rates?*

Background: As noted during the CBOT’s prior sunset review and mentioned in its current *2016 Sunset Review Report*, the CBOT's consumer satisfaction survey has a very low response rate (51 in the last four FYs). A low response rate makes it difficult to develop an accurate picture. In response, the CBOT has begun taking steps to improve its response rate, such as utilizing email reminders, utilizing Quick Response (QR) codes, and self-addressed envelopes.

Still, there may be other avenues to utilize. The CBOT has stated that it will increase its use of Twitter, Facebook, and other technologies this year (2017). These platforms might be useful tools to host additional types of surveys.

Staff Recommendation: *The CBOT should advise the Committees on any contemplated solutions to the low consumer satisfaction survey response rates.*

ISSUE #12: *What impediments, other than timing and planning, impact the CBOT's ability to webcast its meetings?*

Background: Webcasting is a commonly used and helpful tool for licensees, consumers, and other stakeholders to monitor boards in real-time and better participate when unable to physically attend meetings. While meetings are split between northern and southern California, there are only a few meetings per year and travel to and from meetings can be difficult. As a result, webcasting provides greater access. It also improves transparency and provides a level of detail that cannot be captured in the board-approved minutes.

In 2013, the Committees noted that the CBOT webcasts very few meetings and recommended that it webcast more frequently. However, the CBOT reports that it was still unable to do so due to limited DCA resources. It has only webcasted four meetings since 2012 (five years). While no action was taken until this year, the CBOT has noted that it selected its 2017 meeting dates earlier than in years past in hopes that it will be able to webcast more frequently this upcoming year.

Staff Recommendation: *The CBOT should advise the Committees on specific instances in the past four years when the DCA did not have enough resources to assist with webcasting when requested, why the CBOT was not able to select early meeting dates in the past four years, and any other impediments the CBOT faces when trying to webcast its meetings.*

EDITS TO THE PRACTICE ACT

ISSUE #13: *Should the Practice Act be amended to change the CBOT's ratio of public members to professional members?*

Background: There has been a lot of recent discussion surrounding board composition. In February 2015, the U.S. Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (FTC), and the FTC's subsequent guidance²⁷ on the issues, opened discussions on the potential for anti-competitive decisions by state licensing boards. In the case, the Court ruled that the dentist-controlled Board of Dental Examiners did not qualify for state-action immunity for violations of the the Sherman Antitrust Act²⁸ because the Board was not actively supervised by the state.

However, California DCA boards are structured differently and have more inherent protections than the NC Board. Further, the subsequent FTC guidance suggests that even a single

²⁷ Federal Trade Commission, *FTC Staff Guidance on Active Supervision of State Regulatory Boards Controlled by Market Participants* (October 2015), https://www.ftc.gov/system/files/attachments/competition-policy-guidance/active_supervision_of_state_boards.pdf.

²⁸ 26 Stat. 209, 15 U.S.C. §§ 1-7.

professional member can still be a “controlling majority,” so board composition is not likely the solution to the immunity issue.

Still, the Little Hoover Commission has noted the potential barriers to entry into a profession and the potential for protectionism that boards present,²⁹ so there may still be benefits to restructuring the boards. Rebalancing licensing boards so that they have a public member majority could do this by increasing the weight of the consumer perspective and increasing the focus on operational efficiency. While every board is different, it is not uncommon for public members to defer to professional members on issues that do not require specific subject matter expertise, such as administration and management.

However, smaller boards or boards of lesser-known professions may have a difficult time recruiting public members. To deal with this, boards can establish practice committees (which the CBOT has) that can be used to fill the gaps in subject matter expertise. Alternatively, some boards might utilize panels of experts during hearings if immediate assistance is necessary.

However, other solutions may also be needed. Improvements to the appointments process might assist with potential recruitment, and additional training can assist with management and administrative issues. For instance, the appointing body or the DCA could help prepare a robust, ongoing training or helpful documentation to help attract and improve the retention of public members.

Staff Recommendation: *The CBOT should discuss the pros and cons of rebalancing the ratio of board members and discuss any other potential areas that might need to be addressed, such as recruitment, the appointment process, and board member training.*

ISSUE #14: *Are there technical changes that can be made to the Practice Act that may improve the CBOT’s operations?*

Background: The CBOT has indicated in its *2016 Sunset Review Report* that there are a number of changes to its Practice Act that it would like to request. It states that it has identified several statutory changes that would enhance or clarify the Practice Act assist or assist with consumer protection.

Staff Recommendation: *The CBOT should continue to work with the Committees on the submitted proposals.*

²⁹ Little Hoover Commission, *Jobs for Californians: Strategies to Ease Occupational Licensing Barriers*, Report #234, 22-23 (2016), available at <http://www.lhc.ca.gov/studies/234/Report234.pdf>.

CONTINUED REGULATION OF THE PROFESSION

ISSUE #15: *Should the State continue to license and regulate OTs and OTAs? If so, should the Legislature continue to delegate this authority to the CBOT and its current membership?*

Background: The CBOT has shown a commitment to its mission and a willingness to work with the Legislature to improve consumer protection. However, there is always room for improvement. The CBOT's recent implementation of BreEZe and increased staff should improve the CBOT's operations, but the CBOT should continue to seek ways to improve its budget, efficiency, and consumer outreach, including reducing its enforcement backlogs by the proposed December 2017 date noted in its *2016 Sunset Review Report*.

Staff Recommendation: *The CBOT should continue to regulate OTs and OTAs in order to protect the interests of the public for another four years and should update the Committees on its progress at that time.*