AGENDA ITEM 3

CONSIDERATION AND REVIEW OF PREVIOUS POLICY ISSUES IDENTIFIED IN 2012 SUNSET REPORT THAT HAVE NOT BEEN ADDRESSED AND POSSIBLE RECOMMENDATION TO BOARD REGARDING PRIORITIZATION AND RESPONSE ON THE STATUS OF THOSE PREVIOUS ISSUES IN THE BOARD'S 2016 SUNSET REPORT.

An extract of policy issues submitted in the 2012 Sunset Report is attached for review.

Section 11 – New Issues

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

1. Issues that were raised under prior Sunset Review that have not been addressed.

ISSUE # 1: Webcasting meetings.

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

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

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

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

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

Question: If you answered YES to "Have you interacted with any other state licensing/regulatory Board/agency" please rate our Board:		
	Response Count	**Response %**
Excellent	3	23.1%
Good	2	15.4%
Neutral	1	7.7%

Needs Improvement	**4**	**30.8%**
Poor/ Unsatisfactory	**3**	**23.1%**
Skipped question	23	

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

ISSUE # 3: Publishing Citations.

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

ISSUE # 4: Continuous Query.

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

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

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

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

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

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

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

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

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

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

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

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

Probation with Suspension	2	0	1
Probation	8	6	11
Probationary License Issued	6	1	3
Other	4	2	3

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

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

ISSUE # 7: Budgetary constraints.

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

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

a) No memberships with professional associations

b) No travel to or presentation at conferences

c) Little to no consumer outreach or education activities

d) No actions in terms of workforce development have been taken

e) No data has been collected regarding the OT practitioner workforce supply and demand in California

f) Inability to fill authorized positions due to the necessity of redirecting funds to offset enforcement-related over-expenditures

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

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

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

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

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

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

PRACTICE ISSUES

ISSUE #9: Defining Occupational Therapy.

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

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

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

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

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

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

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

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

2. New issues that are identified by the board in this report.

3. New issues not previously discussed in this report.

AGENDA ITEM 5

CONSIDERATION AND POSSIBLE RECOMMENDATION TO BOARD RELATING TO SUGGESTED LEGISLATIVE AMENDMENTS TO BUSINESS & PROFESSIONS CODE SECTION 2570.2(K), "PRACTICE OF OCCUPATIONAL THERAPY" THAT WERE SUBMITTED TO THE SCOPE OF PRACTICE AD HOC COMMITTEE AUGUST 8, 2016.

Suggested legislative amendments to the scope of practice are attached for review.

(k) "Practice of occupational therapy" means the therapeutic use of purposeful, valuable, and necessary ~~and meaningful~~ goal-directed activities (occupations)which engage the individual's body and mind in meaningful, organized,and self-directed actions that maximize independence,and/or self-reliance, minimize or prevent ~~prevent or minimize~~ disability, and maintain health. Occupational therapy services encompass 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 impairment (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 identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensatory skills to enable performance in occupation, and prevent or minimize disability and/or impairments in daily life functioning. ~~compensating for and preventing dysfunction, or minimizing disability.~~ Occupational therapy techniques that are used for treatment involve 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 or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Therapeutic s~~S~~ervices are provided individually or in groups, or through special populations or social groups~~., in groups, or through social groups.~~

(k) "Practice of occupational therapy" means the therapeutic use of purposeful and meaningful goal-directed activities (occupations) 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. Appreciate that "body and mind" are included in this statement and that it ends with "maintain health", which is broad enough to address even "wellness" as added by ACA (Kocher, et al., 2010).
Needs to change "purposeful and meaningful goal-directed activities" to "occupations" (AOTA, 2014, p. S2).

Occupational therapy services encompass 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)).
Dislike the emphasis on IEP and IDEA wording. It sounds like only people already receiving care may continue to do so under an existing IEP or IDEA. Check with paeds or school-based OTs re: how to change that.

Suggest that the "treatment, education of, and consultation with, individuals who..." be changed to "individuals, groups, or populations" (AOTA, 2014, p. S2)

Occupational therapy assessment identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities.
Could we add "promotion of health and wellness"(AOTA, 2014, p. S1) after learning and work instead of similar meaningful activities?

Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability.
Appreciate the use of the word "developing" as it addresses habilitation, again supporting ACA (Kocher, et al., 2010) expansion.

Occupational therapy techniques that are used for treatment involve 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).

Change to: Occupational therapy treatment techniques aim to promote or enhance participation in I/ADLs, rest/sleep, education, work, play, leisure, and social participation utilizing occupations, preparatory methods and tasks, education and training, advocacy, group interventions, care coordination, and consultation services (AOTA, 2014).

Also recommend changing the orthosis statement from "designing or fabricating" to "design, selection, fitting, fabrication, and training for orthotic devices; application and training in use of UE prosthetic devise, and/or the use of assistive technology (although I'm not too sure the assistive technology belongs here)(Dimick, et al., 2009, exhibit 2).

Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, in groups, or through social groups.

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8/2/16

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