

AGENDA ITEM 4

REVIEW AND APPROVAL OF THE SEPTEMBER 1, 2021, COMMITTEE MEETING MINUTES

The meeting minutes are attached for review.



TELECONFERENCE SUNSET REVIEW COMMITTEE MEETING MINUTES

Wednesday, September 1, 2021

4:00 pm – Committee Meeting

1. Call to order, roll call, establishment of a quorum.

California Board of Occupational Therapy (Board) President Sharon Pavlovich called the meeting to order at 4:10pm. Board staff called the roll and a quorum was established.

Committee Members Present

Board President – Sharon Pavlovich
 Board Secretary – Beata Morcos
 Board Member – Richard Bookwalter
 Board Member – Denise Miller

Committee Members Absent

N/A

Board Staff Present

Heather Martin – Executive Officer
 Jody Quesada Novey – Associate Analyst

2. Chairperson opening remarks.

Chairperson Sharon Pavlovich welcomed all that were present and expressed her appreciation for the Committee members. Ms. Pavlovich welcomed Board member Richard Bookwalter as a newly appointed participant and thanked him for his willingness to lend his expertise along with that of Board members Denise Miller and Beata Morcos all of whom participated on the prior Sunset Review Committee.

3. Public Comment Session for items not on the Agenda.

Lauren Lopez with the Occupational Therapy of California’s (OTAC) Advocacy and Government Affairs introduced herself.

OTAC Executive Director Karen Polastri and Lisa Test, OTD both chose to introduce themselves.

There was no further public comment.

4. Review of draft 2021 Sunset Report prepared to date and possible recommendation to Board to approve.

Executive Officer Heather Martin explained that she provided the report in its entirety so that everyone could get an idea not of just what was updated but what is expected by the Legislature. Ms. Martin added that the questions included were from the last Sunset Review because the Legislature had not yet sent the updated questions which could result in small changes to the report layout.

Ms. Martin reported that many of the tables have been completed with the required data and that Board staff is determining how to produce the performance measures information to comply with ADA requirements. Ms. Martin divulged that she was hoping that the Committee would agree to review the report on a page by page basis and make 'real time' changes.

Public Comment

Karen Polastri asked if the prior meeting minutes are available and if the report Ms. Martin is referencing is available for public consumption.

Ms. Martin explained that the last Sunset report was in 2016 and is available under Forms and Publications on the Board's website. The May Board meeting minutes were not yet available because the Board had not yet voted on them.

Board member Denise Miller asked if Ms. Martin would explain the dates and logistics.

Ms. Martin explained that the Senate Business and Professions Committee had not sent a letter that included updates nor the questions, but she could confirm that a bound, printed copy of the report is due to the Legislature by December 1st. Ms. Martin pointed out that in order to meet the due date she hoped that the Board would be able to approve and adopt the Sunset report at the November 4-5, 2021, Board meeting.

Ms. Miller asked for clarification of on page 4, item #2 in the materials as it pertains to being unable to hold a meeting due to quorum issues.

Ms. Martin replied that the last time a meeting had to be cancelled was back in 2008 or 2009.

Board Secretary Beata Morcos expressed her concern that the legislature could change the questions in the upcoming weeks and that would be a waste of time and unfair to Board staff.

Ms. Martin commented that history has proven that changes to the information or questions are usually minimal and that she felt the completed work would still be productive.

Board member Richard Bookwalter asked that the Committee to back to page 1, section 1 to review the definition of occupational therapy (OT) because definitions evolve over time. He also noted that since a new OT Practice Framework was introduced after the Board's 2016 Sunset Report, it might be a good idea to cross check.

The Board members concurred with Mr. Bookwalter.

Public Comment

A member of the public asked Mr. Bookwalter to clarify if he was referring to the definition of faculty who are teaching.

Mr. Bookwalter clarified that he was only referring to the definition of occupational therapy and was requesting the definition that was provided in the 2016 be reviewed in as it may have been updated since the last report. The Committee wants to ensure that the Sunset Report has the most updated definition of OT.

Ms. Martin clarified that the information in the 2016 Sunset Report was a description of occupational therapy in lay persons terms. It is a description that the Sunset Report Committee and Board chose to use.

The Committee decided to take more time to think about the topic of the occupational therapy definition to be used in the Sunset Report and asked that Board staff provide the Practice Act and the Occupational Therapy Framework at the next meeting even though some of the Committee members will be doing their own comparisons prior to the next meeting.

Ms. Pavlovich asked that the OT Practice Framework document to Ms. Martin since Board staff does not have membership access.

The next item in the Sunset Report was the Legislative bills, included on pages 5-9 that affected the Board. Ms. Martin stated that the bills and descriptions came from the Department of Consumer Affairs (DCA) thus she was certain that it was accurate. Ms. Martin stated that the table following the bills will be completed after DCA provides the data.

Ms. Martin addressed the reference on page 9, item 4, and the fact that she is still trying to get the finalized version of the workforce study completed by the California Community Colleges Chancellor's Office

Ms. Martin clarified that regarding page 9, item 5, that over the years the Board has been a member of different associations, including American Occupational Therapy Association, Occupational Therapy Association, the Council on Licensing, Enforcement and Regulation, but is not currently a member of any association.

Mr. Bookwalter commented that Sections 2, 3, and 4 which spanned pages 10-31 seemed like the Committee wouldn't have a lot of contribution besides review.

Public Comment

Karen Polastri commented that she was trying to navigate the Sunset Report.

The Committee summarized the Action items for Board staff as:

- Copy and pasting the Practice Act
- Providing the Practice Framework
- Replacing "he or she" with gender neutral language throughout the document.

Mr. Bookwalter stated that work completed on pages 24-27 regarding Board licensure processes looked current and acceptable thus far.

The Committee decided to move to Agenda Item 5 in the interest of time and to revisit the Sunset Report again next meeting.

5. Review of policy issues identified in 2016 Sunset Report that have not been addressed and possible recommendation(s) to Board regarding prioritization and response on the status of those previous issues in the Board's 2021 Sunset Report.

Executive Officer Heather Martin reported that the information provided was a copy/paste from 2012 and 2016 to be used as a reference. Board staff would delete the 2016 responses to 2012 issues and develop a current response to 2016 issues. Ms. Martin confirmed that the Board would be responsible for responding to each issue and any new issues that need to be addressed.

The Committee agreed to take in to account the 2016 submitted responses to address the issues because some of language continues to be a valid.

Issue #1 Webcasting meetings.

Ms. Martin reported that Webcasting is a matter of availability so choosing the upcoming years' meeting dates at the end of the year prior and requesting webcasting soon after is going to increase the Board's chances of getting on the webcasting calendar.

Committee member Denise Miller lost connection at 5:15 p.m. The Committee continues to have a quorum.

Issue #2 What is contributing to low customer satisfaction ratings?

Ms. Martin reported to the Committee that when Board staff reached out to the DCA Internet team to retrieve the Customer Service survey data it was discovered that the survey came off the Board's website in 2019. Board staff is going to have to check with Survey Monkey to find if it's possible to retrieve any information submitted from 2016 up to 2019.

Issue #3 Publishing Citations.

Ms. Martin reported that Board staff will be able to respond to this issue and say that it is no longer a concern because the public is able to access citation records when they use the "Verify a License" link.

Mr. Bookwalter asked if Board staff could add the timeframe in which a citation is attached to the licensing record.

Ms. Martin confirmed that posting took place the same day and that she would add that to the narrative she provided.

Issue #4 Continuous Query.

Ms. Martin stated that the update would include the fact that Board staff submitted a modification to BreEZe to include an NPDB query fee to accommodate this issue. Board staff participated in the NPDB program for a few years which was time consuming and only received two reports of adverse actions from the databank. Ms. Martin recommended that the response to Issue 4 state that Board staff was responsive, but the Continuous Query proved to be useful or cost effective given the workload.

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

Ms. Martin explained that this would have required a regulation package to enact and that unfortunately it fell off the radar.

The Committee agreed to take responsibility, apologize, and commit to addressing the issue in the future.

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

Ms. Martin stated that she was comfortable responding similarly to the 2016 response because she believed that Stipulated Settlements are effective, quicker in the imposition of discipline and cost effective.

Issue #7 Budgetary Constraints.

Ms. Martin reminded the Committee that she saved funds over the course of three years to mitigate the cost of the office move and to not have to request a budget change proposal. The Board has limited and/or eliminated travel when directed by the Administration. In terms of recognizing the value of WebEx Board, staff saw the increase in access, greater attendance, and increased participation at meetings. Ms. Martin stated that the Board and Board staff have been good stewards of public funds and there are no budgetary constraints.

The Committee asked that if appropriate, Ms. Martin add the fact that Board staff saved and put away money to execute the office move.

Issue #8 License portability for military personnel and their spouses.

Ms. Martin stated that Board staff will be able to address and display compliance with any new requirements since the 2016 response and show compliance with the current Business and Professions Code sections. The last paragraph of Issue #8 on page 7 asks Board staff to identify the number of people that have asked for a renewal fee waiver. Ms. Martin stated that the numbers were 0-2 renewal fee waivers per year.

Issue #9 Defining Occupational Therapy.

Ms. Martin recalled that there was a bill that passed after the last Sunset report that amended the definition of Occupational Therapy and required licensure of faculty. Ms. Martin stated that Board staff will be able to use that as a Sunset report response unless the Committee and Board decide that they wish to make further amendments.

The Committee decided to put this issue on hold until a time that the definition of occupational therapy is agreed upon by the Committee and Board.

Issue #10 Are the minimum education requirements equal to the advanced practice requirements.

Ms. Martin stated that she believed the Board should revisit this topic after determining if ACOTE guidelines sufficiently addressed this topic for a partial or complete removal.

A discussion ensued about the inconsistencies between schools and the curriculum they offer and the results of the study that showed schools did not have faith that their students were prepared to deliver Advanced Practices after finishing their program.

The Committee agreed to develop a Practice Committee that includes practitioners with Advanced Practice approval as well as Educators who can weigh in on what curriculum should be offered and how many hours should be required.

The Committee directed Mss. Martin to reach out to Chuck Wilmarth for any changes to the ACOTE guidelines regarding content relating to advanced practice areas and any other information he thinks helpful.

Public Comment

OTAC President Bryant Edwards commented that taking another look at the changes that have been made to curriculum would be his recommendation. He wanted to ensure that the Board is not being overly constraining if the curriculum is meeting education guidelines.

Sharon Pavlovich reported to Mr. Bryant that the concern of the Board was born from the study that included what the schools were doing to prepare their students for Advanced Practice and the results showed glaring inconsistencies in the curriculum and amount of instruction required.

Mr. Edwards asked if the survey was available.

Ms. Martin reported that there were 2 surveys done by Donna Breger Stanton's group. Ms. Martin offered to email the surveys to Mr. Edwards.

Lisa Test commented that she was in favor of the Committee exploring an Ethics course requirement and that it has been her experience that the investigation of complaints is a process that takes too long and she is reticent to file additional complaints. Ms. Test was concerned with the timeliness of solving complaints and hopes it is addressed during the Sunset report.

Ms. Pavlovich assured Ms. Test that her concerns would be reviewed.

Mr. Bookwalter advocated against Ms. Test's reticence to file complaints to the Board because regardless of due process and how long it takes, it is every therapist's duty to report alleged wrongdoing. He encouraged Ms. Test to continue reporting her concerns to the Board since the Board only knows what is brought before it.

Ms. Martin asked that Ms. Test not allow disappointing complaint resolution timeframes to dissuade her from submitting complaints. Ms. Martin reminded all in attendance that the OT Practice Act requires licensees to report violations to the Board and cooperate in any investigation. Ms. Martin further explained the timeline, use of an expert witness and additional steps involved when dealing with a patient care of fraud case.

Ms. Test thanked the Committee for the opportunity to participate and responded that she was familiar with the reporting process.

Discussion of the next meeting date and time ensued. Beata Morcos asked that the next meeting begin at 3:00 p.m. or 3:30 p.m.

Ms. Pavlovich agreed.

Ms. Pavlovich thanked everybody in attendance for their time.

The meeting adjourned at 5:58 p.m.

DRAFT

AGENDA ITEM 5

REVIEW OF DRAFT 2021 SUNSET REPORT PREPARED TO DATE AND POSSIBLE RECOMMENDATION TO BOARD TO APPROVE.

The Draft 2021 Sunset Report is attached for review.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of XX TBD XX 2021

Section 1 Background and Description of the Board and Regulated Profession

The occupational therapy profession was established in 1917 and is one of the oldest allied health professions in the United States. Chapter 697/00 (SB 1046)

Senate Bill 1046 (Murray, Chapter 697, Statutes of 2000) created the California Board of Occupational Therapy, effective January 1, 2001. The Board is responsible for the licensure and regulation of Occupational Therapists (OTs) and Occupational Therapy Assistants (OTAs) in California. The Board's mission is to regulate occupational therapy by serving and protecting California's consumers of occupational therapy services through effective regulation, licensure and enforcement.

California passed a title control /trademark law for occupational therapy in 1977, establishing Business and Professions Code (BPC), Section 2570, prohibiting individuals from using the professional titles recognized for Occupational Therapists (OT, OTR) and Occupational Therapy Assistants (OTA, COTA) without appropriate professional training/education. The law was updated in 1993 to further clarify the minimum education and examination requirements for practicing occupational therapists and occupational therapy assistants. The law had no registration process with the state or enforcement structure, nor did it prevent an unqualified individual from practicing occupational therapy as long as the individual did not refer to themselves as an occupational therapist or occupational therapy assistant.

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

Language below provided by RB; found on AOTA website: Occupational Therapy: Improving Function While Controlling Costs [_ \(https://www.aota.org/About-Occupational-Therapy/Professionals.aspx\)](https://www.aota.org/About-Occupational-Therapy/Professionals.aspx).

In its simplest terms, occupational therapists and occupational therapy assistants help people of all ages participate in the things they want and need to do through the therapeutic use of everyday activities (occupations). Unlike other professions, occupational therapy helps people function in all of their environments (e.g., home, work, school, community) and addresses the physical, psychological, and cognitive aspects of their well-being through engagement in occupation.

Common occupational therapy interventions include helping children with disabilities to participate fully in school and develop social skills, helping people recovering from injury to regain function through retraining and/or adaptations, and providing supports for older adults experiencing physical and cognitive changes. Occupational therapy services typically include:

- an individualized evaluation, during which the client, family, and occupational therapist determine the person's goals,
- customized intervention to improve the person's ability to perform daily activities and reach the goals, and
- an outcomes evaluation to ensure that the goals are being met and/or to modify the intervention plan based on the patient's needs and skills.

Occupational therapy services may include comprehensive evaluations of the client's home and other environments, recommendations for adaptive equipment and training in its use, training in how to modify a task or activity to facilitate participation, and guidance and education for family members and caregivers. Entry-level practice requires a master's degree for occupational therapists and an associate degree for occupational therapy assistants (who must be supervised by an OT).

Language below is definition of Occupational Therapy set forth in BPC 2570.2(l)

“Occupational therapy” means the therapeutic use of purposeful and meaningful goal-directed activities (occupations) with individuals, groups, populations, or organizations, to support participation, performance, and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided for habilitation, rehabilitation, and the promotion of health and wellness for clients with disability- and non-disability-related needs or to those who have, or are at risk of developing, health conditions that limit activity or cause participation restrictions. Occupational therapy services encompass occupational therapy assessment, treatment, education, and consultation. Occupational therapy addresses the physical, cognitive, psychosocial, sensory-perception and other aspects of performance in a variety of contexts and environments to support engagement in occupations that affect physical and mental health, well-being, and quality of life. 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, compensating for and preventing dysfunction, or minimizing disability. Through engagement in everyday activities, occupational therapy promotes mental health by supporting occupational performance in people with, or at risk of experiencing, a range of physical and mental health disorders. Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating 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. Services are provided individually, in groups, or populations.

Language below included in 2016 Sunset Report

'Occupations' (the foundation of occupational therapy) are activities in which clients/patients engage and occur throughout the life span, including many elements that enhance one's quality of life, including:

- Activities of daily living or 'self-care' activities;
- Instrumental activities of daily living, or activities to support independent living or daily life within the home and community;
- Work, or activities for engaging in employment or serving as a volunteer;
- Play, or activities pursued for enjoyment or diversion, or child development;
- Leisure or discretionary rewarding activities; and
- Social participation or the ability to exhibit behaviors and characteristics expected during interaction with others within a social system.

Within their domain of practice (or focus of occupational therapy), occupational therapists and occupational therapy assistants consider the repertoire of occupations in which the client engages, the performance skills and patterns the client uses, and the client's body functions and structures. Occupational therapists and occupational therapy assistants use their knowledge and skills to help clients conduct or resume daily life activities that support function and health throughout the lifespan. Participation in activities and occupations that are meaningful to the client involves emotional, psychosocial, cognitive, and physical aspects of performance. Participation in meaningful activities and occupations enhances health, well-being, and life satisfaction.

Thus, occupational therapists and occupational therapy assistants treat a variety of:

- Body functions (such as neuromusculoskeletal, sensory-perceptual, visual, mental, cognitive, and pain factors) and body structures (such as cardiovascular, digestive, nervous, integumentary, genitourinary systems, and structures related to movement), values, beliefs, and spirituality.
- Activities of daily living, habits, routines, roles, rituals, and behavior patterns.
- Physical and social environments, cultural, personal, temporal, and virtual contexts and activity demands that affect performance; and
- Performance skills, including motor and praxis, sensory-perceptual, emotional regulation, cognitive, communication and social skills.

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

Business and Professions Code (BPC) Section 2570.25 mandates that "protection of the public shall be the highest priority for the California Board of Occupational Therapy in exercising its licensing, regulatory, and disciplinary functions."

In order to accomplish its mission, the Board:

- Ensures only eligible and qualified individuals are issued a license
- Investigates complaints and criminal convictions; and
- Responds to emerging changes and trends in the profession through legislative or regulatory amendments.

The Board's statutes require individuals, with a few exceptions, engaging in the practice of occupational therapy to possess a license.

1. Describe the make-up and functions of each of the board's committees (cf., Section 13, Attachment tbd).

The Board has no committee(s) specified in statute. However, the Board established four standing committees which serve as an essential component to help the Board address specific policy and/or administrative issues. The issues could be referred by the Board to a committee to delve into a policy issue/concern, to address issues referred by the public or licensees to the Board, or on recommendation by Board staff.

The Board's *Administrative Manual* identifies the number of members on each committee, requires the committee chairperson be a board member, and provides the committees' purposes. The committees' roles and responsibilities are included in Section 13, Attachment *tbd*.

The committees, whose meetings are subject to the Open Meetings Act, include the following:

- Administrative Committee
- Education and Outreach Committee
- Legislative and Regulatory Affairs Committee
- Practice Committee

Internal organization of each committee is at its discretion, except as specified in the Board's *Administrative Manual*, and must be approved by the Board. The Committee chairperson, the assigned Board member, will oversee the meetings and work with the Executive Officer to develop an agenda and the meeting materials. The Board member will be responsible for providing the Committee report at the Board meeting.

Committee member terms are two years with a maximum service of two full, consecutive terms. Meetings will be held two or three times per year or as needed to conduct business. Meetings will be subject to the requirements of the Bagley-Keene Open Meeting Act.

Non-Board Member committee members shall be entitled to reimbursement of travel expenses but shall not receive per diem or any compensation for their time.

(Committee info to be updated based on recent updates to committee member qualifications)

Due to travel restrictions and the need to minimize all expenditures, including costs related to travel reimbursement, committee meetings have typically been conducted via

teleconference and the committee’s recommendations are brought to the Board at the next scheduled meeting.

The use of webex has replaced the use of conference calls at designated physical meeting locations, which has improved access and increase attendance by the public.

The information on meeting attendance of all Board Members since the last sunset is included in the Section 13, Attachment *tbd*.

Table 1b. Board Member Roster					
Member Name (Include Vacancies)	Date First Appointed	Date Re-appointed	Date Term Expires	Appointing Authority	Appointee Type - Public or Licensee
Bookwalter, Richard	3/05/2014	05/04/2021	12/31/2024	Governor	Licensee
Davies, Teresa	1/13/2016	01/18/2017	Resigned 5/22/2018	Senate Rules	Public
Do, Lynna	7/25/2020	05/19/2021	12/31/2024	Senate Rules	Public
Ferro, Jeffrey	1/13/2014	12/11/2017	12/31/2020	Assembly Speaker	Public
Hayth, Laura	5/05/2015		12/31/2018	Governor	Licensee
Miller, Denise	5/15/2013	01/22/2021	12/31/2023	Governor	Licensee
Morcos, Beata	05/19/2015	01/04/2019	12/31/2022	Governor	Public
Pavlovich, Sharon	08/16/2013	01/21/2021	12/31/2023	Governor	Licensee
Vacancy	Vacant effective January 1, 2019				Licensee

2. In the past four years, was the board unable to hold any meetings due to lack of quorum? If so, please describe. Why? When? How did it impact operations?

A lack of quorum has not occurred so there has been no adverse impact to Board operations related to appointments.

3. Describe any major changes to the board since the last Sunset Review, including, but not limited to:

- Internal changes (i.e., reorganization, relocation, change in leadership, strategic planning)

In April 2020, the Board moved to its current location at 1610 Arden Way, Suite 121, Sacramento, California 95815.

The Board developed and adopted a new 2020-2024 Strategic Plan, which is included in Section 13, Attachment *tbd*. As part of that process, an environmental scan and analysis of the environment in which the Board operates was conducted. The environmental scan sought stakeholder input on the Board's performance in the areas of Enforcement, Applicant Qualifications, Laws and Regulations, Outreach and Communication, and Organizational Effectiveness. This process included sending a survey to more than XXX stakeholders, including people on the Board's interested parties list, other state occupational therapy boards, the California and national associations that represent the profession, and program directors of all California occupational therapy education programs.

- All legislation affecting the Board since the last sunset review.

2016

AB 2859 (Low, Chapter 473, Statutes of 2016) – Professions and Vocations: Retired Category: Licenses

This bill provides statutory authority for all programs that do not currently have the statutory authority to establish a retired license within the Department to create, by regulation, a system for a retired category of licensure for persons who are not actively engaged in the practice of their profession or vocation. A retired license type must meet specified regulatory requirements, including: 1) a retired license shall be issued to a person with either an active license or an inactive license that was not placed on inactive status for disciplinary reasons; 2) the holder of a retired license shall not engage in any activity for which a license is required, unless the program, by regulation, specifies the criteria for a retired licensee to practice his or her profession or vocation; 3) the holder of a retired license shall not be required to renew that license; 4) the program shall establish an appropriate application fee for a retired license to cover the reasonable regulatory cost of issuing a retired license; and 5) in order for the holder of a retired license to restore his or her license to an active status, the holder of that license must meet the requirements set forth in Business and Professions Code section 464(b)(5).

This bill requires all programs to investigate, upon receipt of a complaint, the actions of any licensee, including those that have a retired, inactive, canceled, revoked, or suspended license.

SB 1348 (Cannella, Chapter 174, Statutes of 2016) – Licensure Applications: Military Experience

This bill requires programs within the Department that authorize veterans to apply military experience and training towards licensure requirements to post information on the program's website regarding the ability of veteran applicants to apply their military experience and training towards licensure requirements.

AB 2744 (Gordon, Chapter 360, Statutes of 2016) – Healing Arts: Referrals

This bill establishes that payment for advertising, where a licensee sells services through a third-party advertiser (e.g., Groupon), does not constitute a referral of patients when the third-

party advertiser does not recommend, endorse, or otherwise select a licensee itself. Additionally, this bill entitles the purchaser of services to a full refund in the event the licensee determines, after consultation with the purchaser, that the service is not appropriate, or if the purchaser elects not to receive the service for any reason and requests a refund. Finally, licensees are required to disclose in the advertisement that a consultation is required and that the purchaser will receive a refund if not eligible to receive the service.

2017

AB 208 (Eggman, Chapter 778, Statutes of 2017) – Deferred entry of judgment: pretrial diversion

This bill changes the existing deferred entry of judgment program for controlled substance cases involving nonviolent defendants into a pretrial drug diversion program. Under the revised pretrial drug diversion program, a defendant would plead not guilty and receive 12 to 18 months to complete a court approved rehabilitation program, after which the criminal charge(s) would be dismissed. This bill limits eligibility in the program to defendants who have not had any felony convictions within five preceding years. If a defendant does not meet the terms of the program, the court would terminate the program and reinstate the criminal proceedings.

AB 508 (Santiago, Chapter 195, Statutes of 2017) – Health care practitioners: student loans

This bill repeals existing law authorizing healing arts programs under the Department to cite and fine licensees, deny renewal of an existing license or deny initial licenses to applicants for defaulting on certain healthcare related student loans.

AB 1706 (Committee on Business and Professions, Chapter 454, Statutes of 2017)

This bill extends the sunset date of the Board of Occupational Therapy to January 1, 2022 and makes various technical changes requested by the Board.

SB 547 (Hill, Chapter 429, Statutes of 2017)

This bill makes numerous noncontroversial, substantive changes to the Board of Accountancy, Board of Barbering and Cosmetology, Board of Chiropractic Examiners, Board of Registered Nursing, Cemetery and Funeral Bureau, Board of Occupational Therapy, Board of Pharmacy, Board of Podiatric Medicine, Board of Psychology, Bureau of Security and Investigative Services, Bureau of Real Estate Appraisers, Bureau of Automotive Repair, and Veterinary Medical Board. This bill specifies that the fee collected by the Board of Occupational Therapy for fingerprinting cannot exceed the amount charged by the agency providing the criminal history record check.

This bill also authorizes the Board of Occupational Therapy to collect a fee to query the National Practitioner Data Bank. The fee cannot exceed the amount charged per query.

SB 796 (Hill, Chapter 600, Statutes of 2017) – Uniform Standards: Naturopathic Doctors Act: Respiratory Care Practice Act

Among other provisions, this bill requires the Substance Abuse Coordination Committee housed within the Department to review the criteria currently used for uniform standard number four related to drug testing for substance-abusing licensees by January 1, 2019.

2018

AB 2221 (Bloom, Chapter 490, Statutes of 2018)

This bill makes technical and substantive changes to the Occupational Therapy Practice Act, including but not limited to: revising and updating definitions, including expanding the definition of “occupational therapy”; authorizing an aide to provide support services to an occupational therapy assistant; increasing the ratio of occupational therapists that may supervise occupational therapy assistants from two to three; and modifying title protection provisions relating to doctoral degrees and registrations.

AB 2138 (Chiu, Chapter 995, Statutes of 2018) – Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction

This bill restricts the discretion of programs within the Department in using prior criminal history as grounds for licensing determinations, and establishes new criteria relating to the denial, suspension, and revocation of licensure. Beginning July 1, 2020, this bill will repeal the current authority to deny a license on the basis of acts involving dishonesty, fraud, or deceit that did not result in a conviction. Other revisions include the adoption of a seven-year limitation on convictions eligible for licensure denial, subject to specified exemptions, and a ban on requiring applicants to self-disclose prior convictions unless the application is made for a listed license type. Finally, this bill requires Department programs, as specified, to track data relating to licensure denials, to publish that data on its website, and submit an annual report to the Legislature, among other provisions.

SB 695 (Lara, Chapter 838, Statutes of 2018) – Professions and vocations: applications and renewals: individual tax identification number

Among other provisions, this bill prohibits licensing programs, including those within the Department, from requiring license applicants to disclose their citizenship or immigration status.

SB 1480 (Hill, Chapter 571, Statutes of 2018) – Professions and Vocations

This bill reduces the required meetings per year from three to two for Department programs and makes a change to the Department’s Consumer Protection Enforcement Initiative (CPEI), to require the addition of “allegations of serious harm to a minor” to complaint prioritization guidelines.

AB 1659 (Low, Chapter 249, Statutes of 2018) – Healing arts boards: inactive licenses

This bill prohibits a licensee with an inactive license from representing that he or she has an active license. This bill also authorizes healing arts programs to establish lower renewal fees for inactive licenses. Finally, this bill reorganizes existing provisions of law without substantive change.

AB 2193 (Maienschein, Chapter 755, Statutes of 2018) Maternal mental health

This bill requires, by July 1, 2019, a licensed health care provider to ensure a mother is offered screening or is appropriately screened for maternal mental health conditions, with

some exceptions. Additionally, this bill requires both a health plan and insurer to develop maternal mental health programs to address mental health and behavioral issues.

2019

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) – Worker status: employees and independent contractors.

This bill places into statute the three-part legal test formulated in *Dynamex v. Superior Court* (2018) 4 Cal.5th 903 ('Dynamex') to determine whether a worker who performs services for a hirer is an employee or an independent contractor in cases related to existing Work Orders enforced through the Department of Industrial Relations and the Employment Development Department. This bill changes the definition of 'employee' under the Labor Code to include the elements of the Dynamex standard and expands the application of Dynamex to all provisions of the Labor and Unemployment Insurance Codes unless otherwise specified. This bill contains numerous exemptions for professions and contract types that are instead governed by preexisting employment law standards, including more than a dozen professions licensed or overseen by boards/bureaus within the Department. Further, providers of 'professional services' are exempt if they meet further specified workplace and work type standards. A catch-all exemption is also included for third-party service contracts and for services rendered through a referral agency.

AB 1076 (Ting, Chapter 578, Statutes of 2019) – Criminal records: automatic relief.

This bill requires the Department of Justice, upon an annual Budget Act appropriation, to review its criminal justice databases on a monthly basis to identify persons who are eligible for automatic criminal record relief with respect to certain arrests and convictions occurring on or after January 1, 2021. The bill requires the Department of Justice to automatically grant relief to an eligible person without requiring the person to file a petition for relief. Such relief includes a notation in the person's criminal record that relief was granted, and the person is released from the penalties and disabilities resulting from the arrest or conviction.

SB 601 (Morrell, Chapter 854, Statutes of 2019) – State agencies: licenses: fee waiver.

This bill allows state licensing entities, including the Department's boards/bureaus, to reduce or waive licensing fees for people or businesses displaced or affected by a proclaimed or declared emergency in the previous year. Licensing fees include those for certificates, registration, or other documents required to engage in business, and applies to fees for renewal or replacement of a physical license for display.

SB 639 (Mitchell, Chapter 856, Statutes of 2019) Medical services: credit or loan.

This bill prohibits a healing arts licensee from charging treatment or costs to an open-ended credit or loan that is extended by a third party and that is arranged for, or established in, that licensee's office more than 30 days before the date on which the treatment is rendered or costs are incurred. The bill additionally prohibits a licensee from arranging for or establishing an open-ended credit or loan that contains a deferred interest provision, except as specified. The bill also revises the currently required patient notice for readability and to incorporate changes made by this bill.

2020

AB 2113 (Low, Chapter 186, Statutes of 2020) – Refugees, asylees, and special immigrant visa holders: professional licensing: initial licensure process.

This bill requires boards and bureaus within the Department to expedite the initial licensure process for an applicant who supplies satisfactory evidence that they are a refugee, have been granted asylum, or have a special immigrant visa, as specified. This bill also allows boards and bureaus to assist these applicants during the initial licensure process. This bill further specifies that persons applying for expedited licensure will still be required to meet all applicable statutory and regulatory licensure requirements. Lastly, this bill authorizes boards and bureaus to adopt regulations deemed necessary to administer these provisions.

SB 878 (Jones, Chapter 131, Statutes of 2020) – Department of Consumer Affairs: license: application: processing timeframes.

Beginning July 1, 2021, this bill requires each board and bureau within the Department that issues licenses to prominently display on their websites each quarter either the current average timeframe for processing initial and renewal license applications, or the combined current average timeframe for processing both initial and renewal license applications. This bill also requires each board and bureau to quarterly post on their websites either the current average processing timeframe for each license type administered by the program, or the combined current average timeframe for processing all license types administered by the program.

SB 1474 (Business, Professions and Economic Development Committee, Chapter 312, Statutes of 2020) – Business and professions.

Among various other provisions, this bill subjects licensees to discipline for including in a consumer service contract or proposed contract a provision that limits the consumer’s ability to file a complaint with the applicable board or bureau, or to participate in a board or bureau investigation of the licensee. This bill further specifies that any waiver of the bill’s ban on certain contract provisions is void and unenforceable.

AB 2520 (Chiu, Chapter 101, Statutes of 2020) – Access to medical records.

This bill requires specified health care providers to complete forms, without charging patients for the completion of these forms, when the forms are needed to determine eligibility for specified public benefit programs. It also expands eligibility for receiving a free copy of patient medical records.

- All regulation changes approved by the board the last sunset review. Include the status of each regulatory change approved by the board.

Section(s)	Rulemaking File Subject	Status	Publication Date	Close of public comment period	Effective date of language

4. Describe any major studies conducted by the board (cf. Section 13, Attachment tbd).

Add info re CCCCCO workforce study

5. List the status of all national associations to which the board belongs.

The Board is a member of the Council on Licensure, Enforcement and Regulation (CLEAR) – CLEAR is an association of individuals, agencies and organizations that comprise the international community of professional and occupational regulation, providing a forum for improving the quality and understanding of regulation to enhance public protection.

- Does the board’s membership include voting privileges?

The Board’s CLEAR membership is part of a DCA’s organizational membership and comes with voting privileges represented by a single organization vote.

- List committees, workshops, working groups, task forces, etc., on which board participates.

The Board’s past President and the Board’s Executive Officer participated in the Council of State Governments’ National Center for Interstate Compacts *Occupational Therapy Compact Advisory Group* (Advisory Group). The Advisory Group, a national workgroup of Board Members, regulators, attorneys and academics, developed recommendations for an OT Licensure Compact (Compact) to facilitate the interstate practice of occupational therapists and occupational therapy assistants.

- How many meetings did board representative(s) attend? When and where .

Two Board representatives, the Board’s past President and Executive Officer, attended the initial in-person meeting in October 2019, in Washington, DC followed by intermittent on-line meetings to review and discuss Compact language. Once the compact was drafted and shared with state licensing boards and associations, there were intermittent conference calls to provide updates on progress on state legislative efforts to implement the Compact.

- If the board is using a national exam, how is the board involved in its development, scoring, analysis, and administration?

The Board uses the same national examinations used by all other state occupational therapy licensing boards and agencies. The vendor that administers and scores the examinations is the National Board for Certification in Occupational Therapy (NBCOT); NBCOT also reports the scores to the candidates, state regulatory agencies, and prospective employers, if a candidate requests this service.

Business and Professions Code section 139, requires the Board to, among other things, evaluate the licensure examination to ensure minimum psychometric standards are met and

compare a California occupational analysis of the profession to the national occupational analysis to assess the validity of the national examination content for California practice.

The Board has not been involved in the development, scoring, analysis, and administration of the examination. However, California licensed occupational therapists routinely serve, as part of pool of more than 50 licensed professionals and faculty members from across the nation, as subject matter experts (SMEs). The SMEs are responsible for exam question development, review, validation and revision.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of XX TBD XX 2021

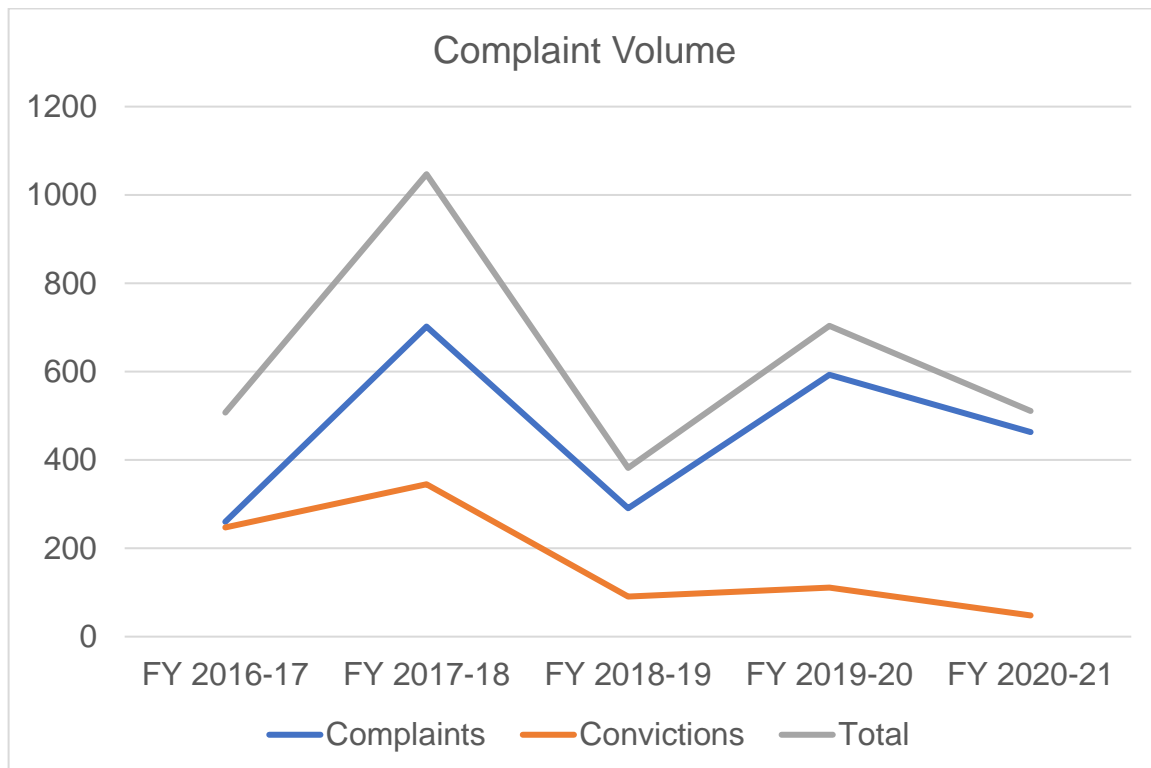
Section 2 Performance Measures and Customer Satisfaction Surveys

1. Provide each quarterly and annual performance measure report for the board as published on the DCA website.

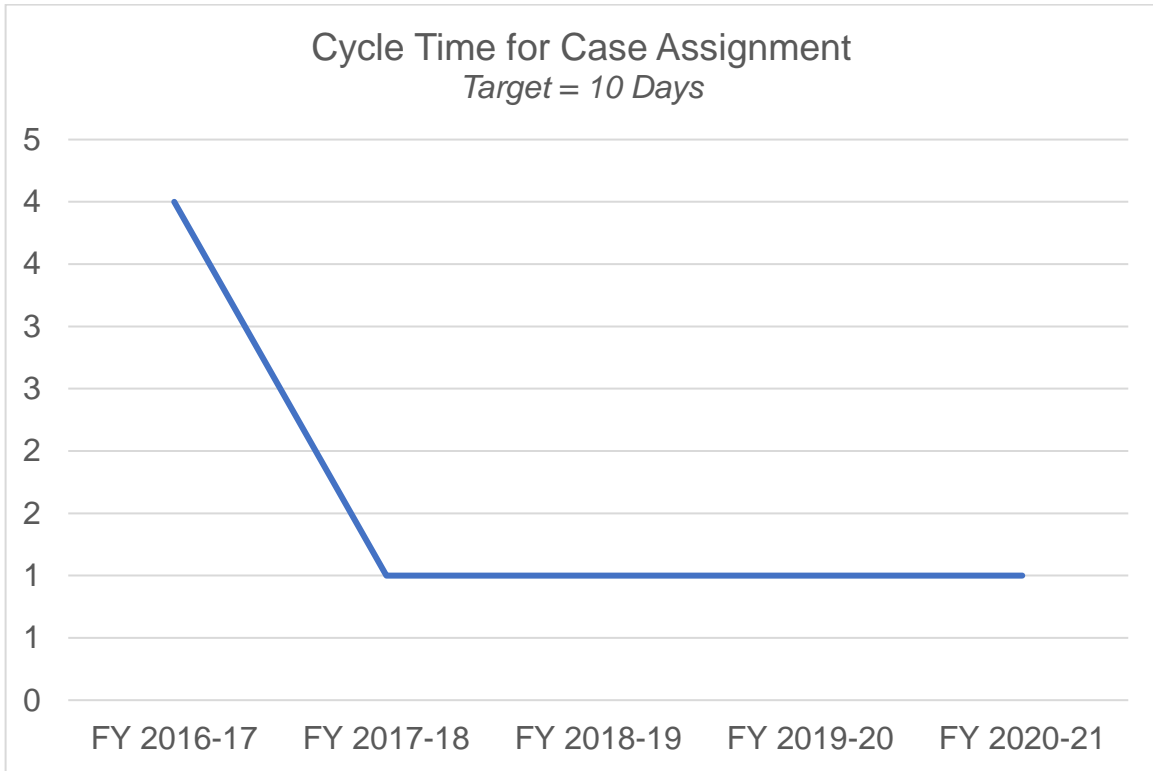
The annual enforcement performances for FY 2016-17 through 2020-21 are shown below.

The quarterly performance measures are provided in Section 13, as Attachment *tbid*.

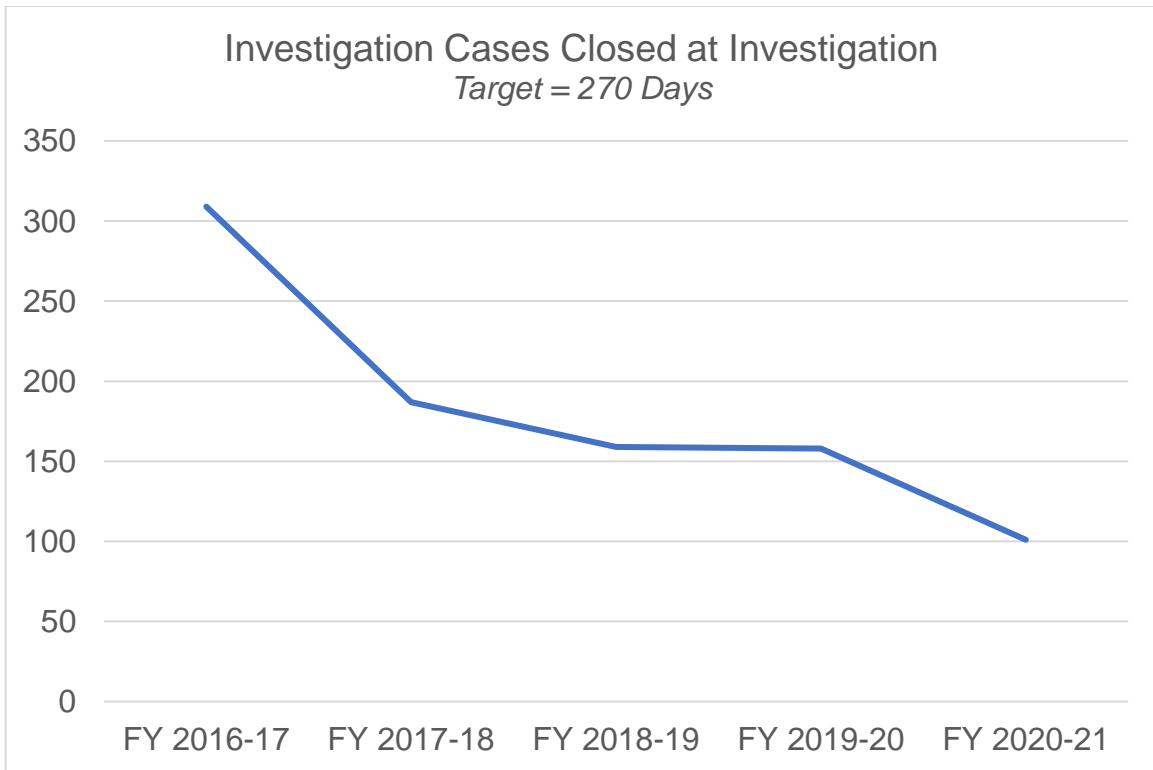
PM 1



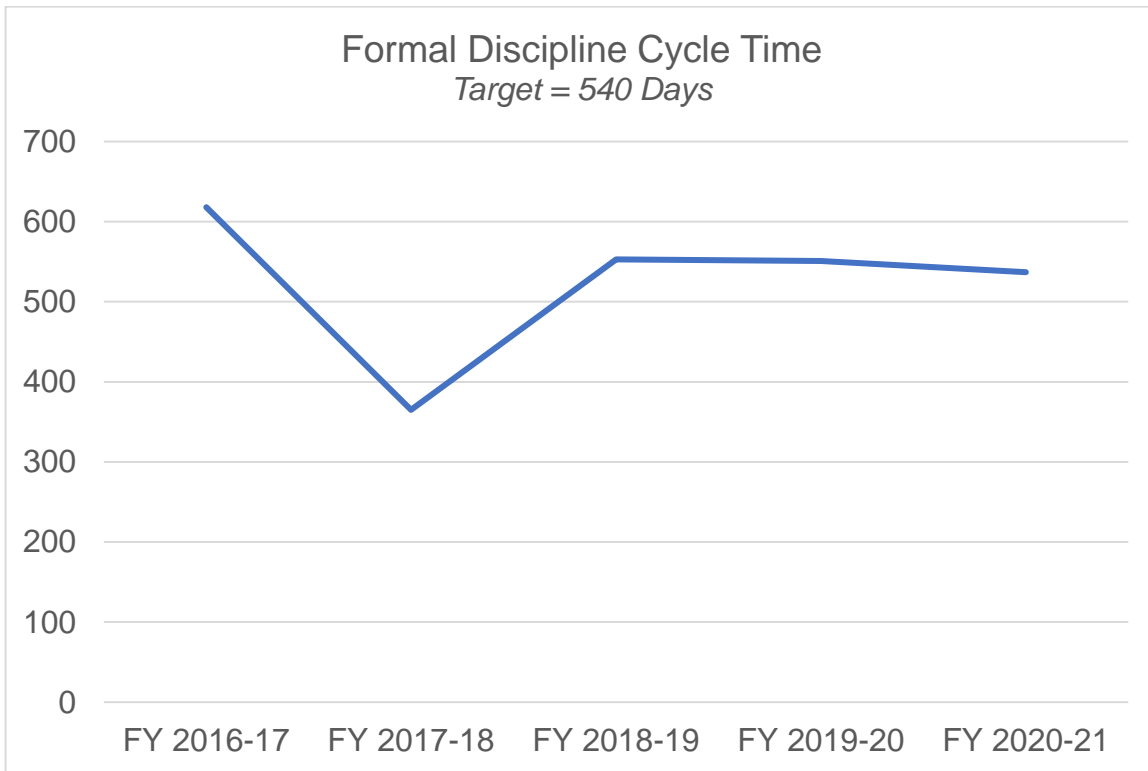
PM 2



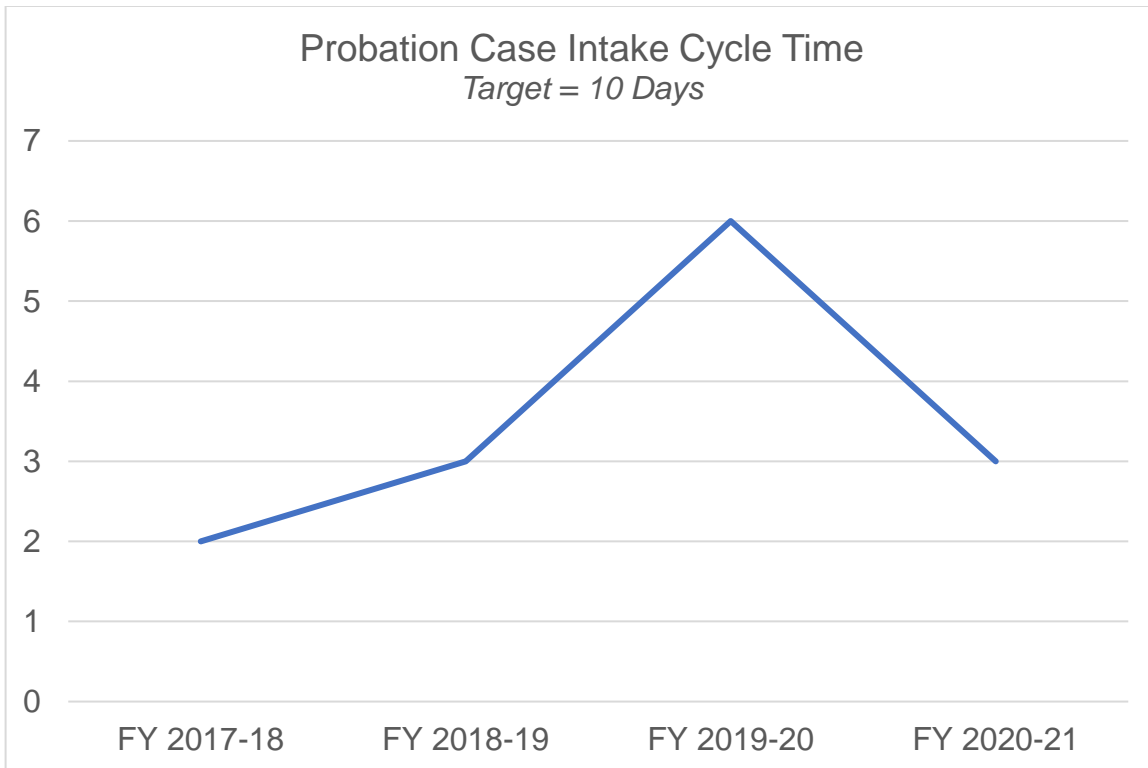
PM 3



PM 4



PM 7



2. Provide results for each question in the board's customer satisfaction survey broken down by fiscal year. Discuss the results of the customer satisfaction surveys.

Section 3 Fiscal and Staff

Fiscal Issues

3. Is the board's fund continuously appropriated? If yes, please cite the statute outlining this continuous appropriation.

The Board's fund is appropriated, subject to approval by the Legislature. Business and Profession Code Section 2570.22 states:

All fees collected by the board shall be paid into the State Treasury and shall be credited to the Occupational Therapy Fund which is hereby created. The money in the fund shall be available, upon appropriation by the Legislature, for expenditure by the board to defray its expenses and to otherwise administer this chapter.

4. Describe the board's current reserve level, spending, and if a statutory reserve level exists.

Historically the Board's expenditures have been less than the annual budget, providing for funds to be reverted to the fund each year. This intentional 'underspending' was a conscious decision to ensure funds were reverted to the Board's fund. This was necessary given the fact that each year, the revenue collected has been less than the Board's expenditures.

Table 2. Fund Condition									
(list dollars in thousands)									
	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	FY 2021/22	FY 2022/23	FY 2023/24
Beginning Balance	2,982	3,029	2,588	2,319	2,097	1,850	1,550	1,035	392
Revenues and Transfers	1,305	1,416	1,800	2,255	2,294	2,481	3,099	3,070	3,065
Total Resources	\$4,287	\$4,445	\$4,388	\$4,574	\$4,391	4,331	\$4,649	\$4,105	\$3,458
Budget Authority	1,437	2,337	2,299	2,348	2,497	3,008	3,317	3,417	3,519
Expenditures	1,283	1,796	2,185	2,151	2,314	2,599	3,317	3,417	3,519
Direct Draws to the Fund *	2	61	85	220	227	161	197	197	197
Loans to General Fund	-	-	-	-	-	-	-	-	-
Accrued Interest, Loans to General Fund	-	-	-	-	-	-	-	-	-
Loans Repaid From General Fund	-	-	-	-	-	-	-	-	-
Fund Balance	\$3,002	\$2,588	\$2,118	\$2,203	\$1,850	\$1,571	\$1,135	\$491	(\$258)
Months in Reserve	19.4	13.7	10.7	10.9	8.0	5.2	3.4	1.3	-1.0

* Direct Draws are Supplemental Pension and Statewide Pro-rata

- 5. Describe if/when a deficit is projected to occur and if/when a fee increase or reduction is anticipated. Describe the fee changes (increases or decreases) anticipated by the board.**

The fund condition in Table 2 indicates that a fee increase is necessary.

- 6. Describe the history of general fund loans. When were the loans made? When have payments been made to the board? Has interest been paid? What is the remaining balance?**

In 2003-04 a loan was made to the general fund in the amount of \$640,000. This amount was repaid in full in FY 2012/13. The Board was also paid \$89,000 in interest in FY 2012/13 as a result of this loan.

In 2009/10 a loan was made to the general fund in the amount of \$2,000,000. This amount was repaid in FY 2013/14 in full. The Board was paid \$82,000 in interest in FY 2013/14 as a result of this loan.

There have been no loans to the general fund since the loan provided in 2009-10.

7. Describe the amounts and percentages of expenditures by program component. Use *Table 3. Expenditures by Program Component* to provide a breakdown of the expenditures by the board in each program area.

Expenditures for each program component (except for pro rata) are shown below.

Table 3. Expenditures by Program Component (dollars listed in thousands)								
	FY 2017/18		FY 2018/19		FY 2019/20		FY 2020/21	
	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	548	296	588	308	624	338	625	319
Examination	-	-	-	-	-	-	-	-
Licensing	287	82	309	46	328	70	419	82
Administration *	311	59	327	33	339	50	313	41
DCA Pro Rata	-	539	-	539	-	565	-	821
TOTALS	\$1,146	\$976	\$1,224	\$926	\$1,291	\$1,023	\$1,357	\$1,263

*Administration includes costs for executive staff, board, administrative support, and fiscal services.

8. Describe the amount the board has contributed to the BreZE program. What are the anticipated BreZE costs the Board has received from DCA?

BreZE Expenditures (dollars listed in thousands)									
FY 2016-17		FY 2017-18		FY 2018-19		FY 2019-20		FY 2020-21	
Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual	Budget	Actual
133,382	128,718	132,000	119,286	111,000	109,576	86,000	87,541	93,000	85,280

At this time the Board is considered in 'maintenance mode' with the BreZE project and ongoing budget of \$85k in FY 2021-22 and \$63k in FY 2022-23 an on-going. However, these costs could fluctuate depending on actual needs of the Board to make modifications to meet licensee and Board needs for improvement.

9. Describe license renewal cycles and history of fee changes in the last 10 years. Give the fee authority (Business and Professions Code and California Code of Regulations citation) for each fee charged by the board.

At the Board's (2001) inception the Annual Renewal fee for both OTs and OTAs was \$150 per year. Due to such a strong fund reserve, in 2007, the renewal fee was not changed, however, the annual renewal was changed to a biennial renewal based on birth month and birth year; licensee's birth month renewing during an odd year if the licensee was born in an odd year or during an even year, if the licensee was born in an even year. (Regardless of month or year of license issuance, initial licenses are pro-rated so that they expire in the licensee's birth month/birthyear. This ensured all licensees were put into an equitable two-year cycle and the Board collect revenue .

Fees currently char

Fee	Fees <i>Prior to</i> 7/1/2017	Fees Effective 7/1/2017	Fees Effective 1/1/2021	Statutory Limit	BPC/CCR
Biennial Renewal OT	220	220	270	\$150/year	CCR 4130(e)
Biennial Renewal OTA	180	180	210	\$150/year	CCR 4130(f)
OT Restore License to Active Status	220	220	270	270	CCR 4128(f)(1)
OTA Restore License to Active Status	180	180	210	210	CCR 4128(f)(1)
OT Inactive Renewal	270	270	270	270	CCR 4127(h)
OTA Inactive Renewal	210	210	210	210	CCR 4127(h)
Delinquent Renewal-OT	135	135	135	135	CCR 4130(g)
Delinquent Renewal-OTA	105	105	105	105	CCR 4130(g)
Citation & Fine	various	various	various	various	CCR 4141(a)
OT Duplicate License Fee	25	25	25	25	CCR 4130(j)
OTA Duplicate License Fee	25	25	25	25	CCR 4130(j)
FTB Cite & Fine Collection	various	various	various	various	CCR 4141(a)
OT Initial License-varies (pro-rated based on renewal fee)	various	various	various	various	CCR 4130(b)
OTA Initial License-varies (pro-rated based on renewal fee)	various	various	various	various	CCR 4130(c)
OT Limited Permit	100	100	100	100	CCR 4130(d)
OTA Limited Permit	100	100	100	100	CCR 4130(d)

OT Retired Status	25	25	25	25	CCR 4130(i)
OTA Retired Status	25	25	25	25	CCR 4130(i)
OT Application fee	50	50	50	50	4130(a)
OTA Application fee	50	50	50	50	4130(a)

Fee	Current Fee	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	% of Total Revenue
Biennial Renewal OT	270	842	1,224	1,395	1,440	1,762	64.68%
Biennial Renewal OTA	210	179	231	263	281	336	12.52%
OT Restore License to Active Status	270	-	-	-	1	1	0.02%
OTA Restore License to Active Status	210	-	-	-	-	-	0.00%
OT Inactive Renewal	270	11	29	49	44	46	1.74%
OTA Inactive Renewal	210	2	5	10	7	10	0.33%
Delinquent Renewal-OT	135	17	22	25	30	33	1.23%
Delinquent Renewal-OTA	105	4	4	5	7	7	0.26%
Citation & Fine	various	24	43	33	48	20	1.63%
OT Duplicate License Fee	25	3	5	4	3	4	0.18%
OTA Duplicate License Fee	25	1	1	1	1	1	0.05%
FTB Cite & Fine Collection	various	2	-	1	2	-	0.05%
OT Initial License-varies	various	136	219	206	201	225	9.58%
OTA Initial License-varies	various	47	63	61	56	54	2.73%
OT Limited Permit	100	3	4	4	3	6	0.19%
OTA Limited Permit	100	1	1	1	1	1	0.05%
OT Retired Status	25	1	3	4	3	3	0.14%
OTA Retired Status	25	-	1	1	1	1	0.04%
OT Application fee	50	61	72	72	65	69	3.29%
OTA Application fee	50	23	26	27	23	19	1.15%
Suspended Revenue	various	9	5	(1)	1	1	0.15%

10. Describe Budget Change Proposals (BCPs) submitted by the board in the past four fiscal years.

Table 5. Budget Change Proposals (BCPs)								
BCP ID #	Fiscal Year	Purpose of BCP	Personnel Services				OE&E	
			# Staff Requested	# Staff Approved	\$ Requested	\$ Approved	\$ Requested	\$ Approved
1111-034 2020	2020-21	Facilities Funding Augmentation					\$94,000	\$94,000
1111-037 2020	2020-21	BreEZe System Maintenance and Credit Card Funding					\$125,000	\$125,000
1111-038 2020	2020-21	Licensing Staff Increase	2.5 Office Technician	2.5 Office Technician	\$193,000	\$154,000	\$89,000	\$74,000
1111-075 2018	2018-19	BreEZe System Maintenance					\$142,000	\$142,000
1111-029 2017	2017-18	BreEZe System and Credit Card Funding					\$128,000	\$128,000

The Board received 2.5 OT positions in FY 2020-21. However, due to the pandemic, the positions were approved on a phased-in approach. Funding for 1.5 positions were approved effective July 1, 2020, and ongoing; funding for the remaining 1.0 position was approved effective January 1, 2021, and ongoing.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

BACKGROUND INFORMATION AND OVERVIEW OF THE CURRENT REGULATORY PROGRAM

As of XX TBD XX 2021

Section 5 Enforcement Program

34. What are the board's performance targets/expectations for its enforcement program? Is the board meeting those expectations? If not, what is the board doing to improve performance?

The Board established a performance target of no more than two days to assign a complaint to an investigator (from the date of receipt). The Board consistently achieves this goal.

The Board established a target of no more than 270 days, from the date the complaint is received to its closure; excluding cases that are referred to the AGO for formal discipline. The Board established a target of no more than 540 days to complete the entire enforcement process (from date of receipt of complaint) for cases resulting in discipline against a licensee. The Board established a target of no more than ten days (from the effective date of the Board's decision imposing probation) to when a probation monitor makes first contact with a probationer. The Board consistently achieves this goal. The Board established a target of no more than ten days from the date a probation violation is identified/reported (to the Board) to the date the monitor initiates appropriate action. The Board consistently achieves this goal.

35. Explain trends in enforcement data and the board's efforts to address any increase in volume, timeframes, ratio of closure to pending cases, or other challenges. What are the performance barriers? What improvement plans are in place? What has the board done and what is the board going to do to address these issues, i.e., process efficiencies, regulations, BCP, legislation?

Table 9a. Enforcement Statistics					
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
COMPLAINT					
<i>Intake</i>					
Received	241	502	499	597	895
Closed without INV	0	0	0	0	0
Referred to INV	241	502	498	596	894
<i>Source of Complaint</i>					
Public	35	37	29	42	44
Licensee/Professional Groups	25	16	32	32	24
Internal	176	445	433	515	810
Governmental Agencies	5	3	4	4	15
Other	0	1	1	4	2
<i>Conviction / Arrest</i>					
CONV Received	156	163	186	111	114
CONV Closed	197	161	190	120	117
Average #of Days to Close (Not Sent to AGO)	303	179	153	158	112
Total Closed Complaint (closed of FY)	661	602	598	698	1,009
Total Pending Complaints (close of FY)	243	288	245	345	319
LICENSE DENIAL					
Applications Denied	2	0	2	0	0
SOIs Filed	1	2	0	1	0
SOIs Withdrawn	0	0	0	0	1
SOIs Dismissed	0	0	0	0	0
SOIs Declined	0	0	0	0	0
Average Days SOI	456	293	938	N/A	528
ACCUSATION					
Accusations Filed	8	28	27	11	17
Accusations Withdrawn	0	0	3	0	3
Accusations Dismissed	0	0	0	0	0
Accusations Declined	0	0	0	0	0
Average Days Accusations	732	404	581	559	897
From Annual Report	603	319	521	373	724
Pending (close of FY)	14	36	19	22	18
DISCIPLINE					
<i>Disciplinary Actions</i>					
Proposed/Default Decisions	10	5	18	11	6
Stipulations	7	10	10	6	10
Average Days to Complete	603		520	373	772
AG Cases Initiated	19	47	25	25	17
AG Cases Pending (close of FY)	14	36	19	22	18

	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
<i>Disciplinary Outcomes</i>					
Revocation	5	5	8	7	5
Voluntary Surrender	2	6	8	3	6
Suspension	0	0	0	0	0
Probation with Suspension ¹	0	0	0	2	0
Probation ²	6	4	10	4	5
Probationary License Issued	2	1	0	0	0
Other	1	1	1	0	0
PROBATION					
New Probationers	8	5	10	6	5
Probations Successfully Completed	5	5	3	2	5
Probationers (close of FY)	21	21	24	23	19
Petitions to Revoke Probation	2	3	3	2	2
Probations Revoked/ License Surrendered	1	5	3	1	3
Probations Modified	1	0	0	1	1
Probations Extended	0	0	0	1	1
Probationers Subject to Drug Testing	12	10	10	10	13
Drug Tests Ordered	449	413	455	678	370
Positive Drug Tests	4	11	9	10	12
Petition for Reinstatement Denied	0	2	1	0	0
Petition for Reinstatement Granted	1	0	0	3	0

Table 9b. Enforcement Statistics

	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
INVESTIGATION					
All Investigations	398	665	685	708	1,009
First Assigned	241	502	499	597	895
Closed	157	163	186	111	114
Average days to close	1	1	1	1	1
Pending (close of FY)	243	288	245	345	319
Desk Investigations	661	602	598	698	1,009
Closed	661	602	598	698	1,009
Average days to close	303	179	162	158	112
Pending (close of FY)	243	288	245	345	319
Non-Sworn Investigation					
Closed					
Average days to close					
Pending (close of FY)					
Sworn Investigation					
Closed					
Average days to close					
Pending (close of FY)					
COMPLIANCE ACTION					
ISO & TRO Issued					
PC 23 Orders Requested					
Other Suspension Orders					
Public Letter of Reprimand					
Cease & Desist/ Warning Letters					
Compel Examination					
CITATION AND FINE					
Total Citations Issued	93	182	172	263	226
Average Days to Complete	334	246	198	201	167
Amount of Fines Assessed	\$42,585	\$60,495	\$43,930	\$63,035	\$43,406
Amount of Fines Collected	\$26,662	\$43,145	\$37,590	\$48,450	\$19,346
Citations with Fine Reduced	\$10,700	\$3,850	\$5,580	\$5,140	\$2,315
Citations Withdrawn	15	6	1	9	4
Citations Dismissed	5	12	17	13	18
CRIMINAL ACTION					

Referred for Criminal Prosecution	0	0	0	0	0
-----------------------------------	---	---	---	---	---

Table 10. Enforcement Case Aging						
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	Total Cases Closed
<i>AGO Cases Closed Within:</i>						
<1 Year	5	11	14	8	5	43
1 - 2 Years	6	3	12	8	3	32
2 - 3 Years	6	2	5	4	4	21
3+ Years	0	0	4	1	3	8
Total AGO Cases Closed	18	21	34	21	15	109
<i>DOI Cases Closed Within:</i>						
0 - 1 Year	1	8	6	8	14	37
1 - 2 Years	2	0	3	4	3	12
2 - 3 Years	0	0	0	0	1	1
3 - 4 Years	0	1	0	0	0	1
4+ Years	0	0	0	0	0	0
Total DOI Cases Closed	3	9	9	12	18	51
<i>Desk Investigation Cases Closed Within:</i>						
90 Days	208	321	353	409	7732	2,064
91 - 180 Days	54	141	92	115	68	470
181 days to 1 Year	79	47	98	93	54	371
1 - 2 Years	307	54	31	69	100	555
2 - 3 Years	11	29	5	3	12	60
3+ Years	2	10	19	15	2	48
Total Desk Investigation Cases Closed	661	602	598	698	1,009	3,568

36. What do overall statistics show as to increases or decreases in disciplinary action since last review?

37. How are cases prioritized? What is the board's compliant prioritization policy? Is it different from DCA's *Complaint Prioritization Guidelines for Health Care Agencies* (August 31, 2009)? If so, explain why.

The Department's *Complaint Prioritization Guidelines* was provided to the Board for consideration at their December 3, 2009, meeting. While the Board agreed with the majority of the priority levels assigned to the list of complaint categories, several of the complaint categories were elevated in priority level and two were lowered.

The Board's *Complaint Prioritization Guidelines* are included as Attachment X in Section 13.

38. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report to the board actions taken against a licensee. Are there problems with the board receiving the required reports? If so, what could be done to correct the problems?

a. What is the dollar threshold for settlement reports received by the board?

BPC Section 801.1(a) requires every state or local governmental agency that self-insures a person who holds a license, certificate, or similar authority, shall report any settlement or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services.

BPC Section 802 requires that every settlement, judgment, or arbitration award over three thousand dollars (\$3,000) of a claim or action for damages for death or personal injury caused by negligence, error or omission in practice, or by the unauthorized rendering of professional services, by a person who holds a license, be reported to the Board.

BPC Section 803.5(a) requires the clerk of the court to notify the Board of any filings against a licensee charging a felony. BPC Section 803.5(b) also requires the clerk of the court to notify the Board, within 48 hours after the conviction, by transmitting a certified copy of the record of conviction to the Board.

The Board also relies on subsequent arrest and subsequent conviction notification from the Department of Justice.

b. What is the average dollar amount of settlements reported to the board?

Info to be provided in next draft of the report

39. Describe settlements the board, and Office of the Attorney General on behalf of the board, enter into with licensees.

- a. What is the number of cases, pre-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?
- b. What is the number of cases, post-accusation, that the board settled for the past four years, compared to the number that resulted in a hearing?

- c. What is the overall percentage of cases for the past four years that have been settled rather than resulted in a hearing?

Info to be provided in next draft of the report

40. Does the board operate with a statute of limitations? If so, please describe and provide citation. If so, how many cases have been lost due to statute of limitations? If not, what is the board's policy on statute of limitations?

The Board has no statute of limitations for administrative violations. Board staff typically works with DCA's Division of Investigation (DOI) in matters and/or the Office of the Attorney General (AGO) to determine the viability of successfully prosecuting the case. Also, if the case is transmitted to the AGO, the Deputy Attorney General assigned to the case will advise staff if they have concerns with successfully prosecuting the case; this includes a review of a variety issues, including but not limited to, the age of the violations, mitigation, etc.

41. Describe the board's efforts to address unlicensed activity and the underground economy.

Info to be provided in next draft of the report

Cite and Fine

42. Discuss the extent to which the board has used its cite and fine authority. Discuss any changes from last review and describe the last time regulations were updated and any changes that were made. Has the board increased its maximum fines to the \$5,000 statutory limit?

Intent of Cite and Fine Authority

Business and Professions Code (BPC) Section 125.9 authorizes the Board to establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine. The Board established CCR Section 4140(a), which authorizes the Board to issue citations and fines to licensees.

Further, BPC Section 148 authorizes the Board to establish, by regulation, a system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee under the jurisdiction of the Board. The Board established CCR Section 4140(b), which authorizes the Board to issue citations and fines and/or orders of abatement to unlicensed persons. This authority is exercised on a case-by-case basis when violations are not necessarily egregious enough to warrant discipline and a lesser form of action is appropriate.

Pursuant to CCR Section 4141(a) fines range from \$50 to \$5,000. The following factors are considered:

1. Gravity of the violation;

2. History of previous violations involving the same or similar conduct;
3. Length of time that has passed since the date of the violation;
4. Consequences of the violation, including potential for patient harm, the good or bad faith exhibited by the cited individual;
5. Evidence that the violation was willful;
6. The extent to which the individual cooperated with the board's investigation;
7. The extent to which the individual has remediated any knowledge and/or skills deficiencies; or
8. Any other mitigating or aggravating factors.

Changes Since Last Sunset Review

There have been no regulatory amendments to the Cite/Fine authority since the last Sunset Review.

Increase of Citation Fine to \$5,000

The Board increased its maximum fines to the \$5,000 statutory limit, effective August 19, 2011. Class "A" citations may be issued under specific circumstances that are more serious in nature and/or resulted in or had significant potential for patient harm. These specific violations include, but are not limited to:

1. Failing to provide direct in-sight supervision of an aide when the aide performed a client related task that resulted in harm to the patient.
2. Failing to provide adequate supervision to an occupational therapy assistant that resulted in harm to the patient.
3. Fraudulent medical billing.
4. Practicing without a current and active license for more than one year.
5. An occupational therapy assistant functioning autonomously.
6. The cited person has a history of two or more prior citations of the same or similar violations.

43. How is cite and fine used? What types of violations are the basis for citation and fine?

A citation and fine is an alternative means by which the Board can address violations that do not warrant formal discipline.

CCR Section 4140 gives the Executive Officer the authority to issue citations with or without fines and abatement orders for violations of the Occupational Therapy Practice Act, violations of the California Code of Regulations adopted by the Board, or other statutes or regulations for which the Board has authority to issue a citation. Section 4141 sets fine amounts of \$50 up to \$2,500 for the least egregious violations.

However, Section 4141(a) sets forth larger fine limits for the more substantial violations. For instance, violations that present a threat to health and safety of another person, unlicensed practice for more than one year or involve multiple violations of the Practice Act, or involve a violation or violations of fraudulent billing, a citation may include a fine up to \$5,000.

A large number of citations and fines are issued for minor address change reporting violations or continuing education audit violations. Fines assessed for such violations typically range from \$50 to \$250, depending upon factors as specified in CCR Section 4141. Factors considered when determining a fine amount are the nature and severity of the violation, evidence that the violation was willful, and extent to which the licensee has cooperated with the Board.

44. How many informal office conferences, Disciplinary Review Committees reviews and/or Administrative Procedure Act appeals of a citation or fine in the last 4 fiscal years?

Citation Appeals				
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Number of Citations Issued to OTs	141	323	225	176
Informal Citation Review Conference Requested by OTs	23	19	19	24
Administrative Hearing Requested by OTs	4	3	2	2
Number of Citations Issued to OTAs	49	46	43	62
Informal Citation Review Conference Requested by OTAs	1	5	3	4
Administrative Hearing Requested by OTAs	0	0	0	0

45. What are the 5 most common violations for which citations are issued?

Citation Violation Details - OTs				
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Number of Citations Issued to OTs	141	323	225	176
Number of cases referred to Franchise Tax Board (FTB) for non-payment	36	23	48	8
Amount collected by FTB and forwarded to the Board	Info to be provided in future report			
Most Common Violations for Citations Issued				
Address Change	81	77	169	125

Failing to complete continuing education	31	378	32	44
Practice on an Expired License	20	19	13	7
Failure to Cooperate (reply) in Board Investigation	2	5	6	4
Failure to Disclose *	5	1	3	0

Citation Violation Details - OTAs				
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Number of Citations Issued to OTAs	49	46	43	62
Number of cases referred to Franchise Tax Board (FTB) for non-payment	18	12	17	3
Amount collected by FTB and forwarded to the Board	Info to be provided in future report			
Most Common Violations for Citations Issued				
Address Change	21	17	28	48
Failing to complete continuing education	12	17	8	14
Practice on an Expired License	2	7	3	1
Failure to Cooperate (reply) in Board Investigation	1	4	1	1
Failure to Disclose *	13	1	3	0

* With passage of AB 2138, effective July 1, 2020, applicants for licensure are no longer required to report convictions to the Board. Therefore, *Failure to Disclose* is not a violation effective 2020-21.

46. What is average fine pre- and post- appeal?

Citation Fine Details - OTs				
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Number of Citations Issued to OTs	141	323	225	176
Total Fines Assessed to OTs <i>Pre-appeal</i>	\$47,470	\$38,735	\$53,740	\$32,520

Total Fines Assessed <i>Post-appeal</i>	\$34,660	\$27,200	\$46,346	\$29,275
--	----------	----------	----------	----------

Citation Fine Details - OTAs				
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Number of Citations Issued to OTAs	49	46	43	62
Total Fines Assessed to OTAs <i>Pre-appeal</i>	\$13,320	\$15,920	\$8,945	\$10,201
Total Fines Assessed <i>Post-appeal</i>	\$12,270	\$12,770	\$8,660	\$9,861

47. Describe the board’s use of Franchise Tax Board intercepts to collect outstanding fines.

The Board utilizes the Franchise Tax Board’s (FTB) Intercept Program to attempt collection of any outstanding fines. Under this program, income tax refund or lottery winnings can be seized and sent to the Board as payment of monies owed. Respondents who fail to pay an uncontested fine are sent a series of demand letters when an account is delinquent. If a fine is not contested and full payment is not made within 30 days of the issuance of a fine, or if the respondent fails to contact the Board to make payment arrangements, the Board will send the first demand letter. The Board will send a second notice about 35 days after the first demand letter was sent.

If no response is received after the second letter is sent, a third and final notice will be sent, via regular and certified mail, notifying the individual that the unpaid item will be sent to the FTB and that any tax refunds or lottery winnings will be intercepted and sent to the Board. The FTB will continue to intercept tax refunds and lottery winnings until payment in full has been made. In addition to the FTB action, California Code of Regulation (CCR) Section 4140 (d) states that the full amount of an assessed, non-contested fine shall be added to the fee for renewal of the license and the license won’t be renewed without payment of the both the renewal fee and the fine.

Cost Recovery and Restitution

48. Describe the board’s efforts to obtain cost recovery. Discuss any changes from the last review.

Table 11. Cost Recovery (dollars listed in thousands)					
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Total Enforcement Expenditures	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>
Potential Cases for Recovery *	5	4	10	6	5
Cases Recovery Ordered	5	4	ge10	6	5

Amount of Cost Recovery Ordered	18	.10	19	35	26
Amount Collected	7	9	9	19	11

* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.

49. How many and how much is ordered by the board for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.

The Board requests recovery of its costs for all cases against licensees relating to revocations, surrenders, and probation; the Board cannot request its costs in investigating or enforcing cases against applicants.

However, not all licensees are ordered to reimburse the Board *all* of its costs. An administrative law judge may only order a *portion* of the Board's costs or to facilitate a stipulated agreement, cost recovery in an amount less than the total costs may be agreed to. Amounts for potential cases, cases ordered, and the ranges of cost recovery that has been ordered and received are reflected by fiscal year in Table 11, Cost Recovery.

Table 11. Cost Recovery		(dollars listed in thousands)			
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Total Enforcement Expenditures	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>
Potential Cases for Recovery *	5	4	10	6	5
Cases Recovery Ordered	5	4	ge10	6	5
Amount of Cost Recovery Ordered	18	.10	19	35	26
Amount Collected	7/9		9	19	11

* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.

50. Are there cases for which the board does not seek cost recovery? Why?

The Board does not seek cost recovery in cases denying an applicant licensure. BPC Section 125.3(a) authorizes the Board to seek recovery of its costs in the investigation and prosecution in cases against licensees; cost recovery does not apply to applicants for licensure.

51. Describe the board's use of Franchise Tax Board intercepts to collect cost recovery.

The Board uses the Franchise Tax Board's Intercept Program to attempt collection of any outstanding cost recovery orders. Under this program, tax returns or lottery winnings can be seized and sent to the Board as payment of monies owed. Respondents who failed to pay the ordered cost recovery are sent Demand Letters when an account is 30 days delinquent. If payment in full is not made within 30 days or if the respondent fails to

contact the Board to make payment arrangements, the Board will send a second notice at 60 days delinquent. If no response is received from the first or second letters, a third and final notice will be sent, regular and certified mail, notifying the individual that his/her file will be sent to FTB and that any tax refunds or lottery winnings will be intercepted and sent to the Board. The FTB will continue to intercept tax refunds and lottery winnings until payment in full has been made. In addition to the FTB action, California Code of Regulation (CCR) Section 4140 (d) states that the full amount of an assessed, non-contested fine shall be added to the fee for renewal of the license and the license won't be renewed without payment of the both the renewal fee and the fine.

52. Describe the board's efforts to obtain restitution for individual consumers, any formal or informal board restitution policy, and the types of restitution that the board attempts to collect, i.e., monetary, services, etc. Describe the situation in which the board may seek restitution from the licensee to a harmed consumer.

The Board requests cost recovery in all cases in which it is authorized to seek cost recovery. The Board's Enforcement Unit requests and ensures that each Accusation prepared by the Office of the Attorney General incorporates a request for cost recovery with reference to the applicable statute, Business and Professions Code Section 125.3. Upon receipt of a Proposed Decision, the Board reviews it to ensure it contains a finding by the administrative law judge regarding the reasonableness of the costs of investigation and prosecution of the case. If the Board ever received a Proposed Decision that failed to provide such a finding, it likely would be remanded back to the administrative law judge to incorporate a finding regarding the Board's costs.

Cases that have been resolved by a Stipulated Settlement have included an order for full or partial costs, depending on the nature and severity of the violation, the respondent's prior disciplinary record, mitigating evidence, the extent to which the respondent has cooperated with the Board and recognized and demonstrated a willingness to correct and/or take steps to prevent reoccurrence of their wrongdoing.

Efforts have not changed since the last sunset review as the Board continues to request cost recovery in every case that is adjudicated and requests restitution in those cases that warrant the request.

Table 11. Cost Recovery		(dollars listed in thousands)			
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Total Enforcement Expenditures	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>	<i>TBD</i>
Potential Cases for Recovery *	5	4	10	6	5
Cases Recovery Ordered	5	4	10	6	5
Amount of Cost Recovery Ordered	18	10	19	35	26
Amount Collected	7	9	9	19	11

* "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act.

Table 12. Restitution (dollars listed in thousands)					
	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21
Amount Ordered	0	0	0	150	0
Amount Collected	0	0	0	3	10