

**RESPONSES TO THE ISSUES AND RECOMMENDATIONS IDENTIFIED IN  
THE BACKGROUND PAPER PREPARED BY COMMITTEE STAFF.**

## CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Joint Sunset Review Oversight Hearing, March 10, 2022  
Senate Committee on Business, Professions and Economic Development and  
the Assembly Committee on Business and Professions

### The Board's Responses to Issues and Recommendations Identified in the Sunset Review Background Paper

## CURRENT SUNSET REVIEW ISSUES

### *BUDGET ISSUES*

#### **ISSUE #1: FUND CONDITION. What is needed to address CBOT's structural budget deficit?**

**Background:** As discussed on page 6 of this paper, and under Issue #1 from the prior sunset review, CBOT has intentionally operated with less revenue than its expenses to reduce its reserve levels in compliance with statutory requirements. However, unless CBOT can increase its revenue, or further reduce its expenditures, it is projected to become insolvent by FY 2023-24.

While CBOT reports it is doing what it can to reduce expenditures, many cost pressures are out of its control. For example, each FY CBOT pays a DCA pro rata cost, which is intended to reimburse the DCA for services rendered to CBOT (and some services are unavoidable, such as teleconferencing and mail). However, it is a complex calculation that is difficult to budget for and can fluctuate widely year-to-year for any board. In FY 2020-21, CBOT's pro rata costs increased by approximately \$256,000, a 7% increase from the prior FY, making up 31% of CBOT's overall expenditures.

In addition, in July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor's Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without any meaningful notice to any client agencies.

CBOT also reports a large increase in expenditures on court reporters. The Office of Administrative Hearings contracts with court reporters to provide transcription services during a hearing. Recent contract amendments, changing from hourly to flat all day or one-half day rates (without regard to hearing length), as well as rates varying by geographical area, are attributed to the rising costs.

Other cost pressures out of CBOT's control include steady increases in state worker pay and benefits, rent, and general costs due to inflation. In addition, the overall workload increases as the licensee population also steadily increases.

As a result, it is unlikely CBOT will be able to address its budget deficit through expenditure reduction. Therefore, it is currently considering increasing its fees but has not decided on any specific proposal. At the CBOT's recent February 15, 2022, board meeting, staff discussed the budget issue and presented several proposals and budget scenarios. CBOT has several options, including a straight fee increase across all fees, seeking statutory changes to untether the initial license fee from the renewal fee, creating new fees for certain services it provides for free, among other things. New fees could include minor services such as printing pocket cards or more major services such as approving advanced practice education providers (discussed further under Issue #6).

CBOT did not make a decision at that meeting and created an ad hoc committee to review its budget and make recommendations on an appropriate proposal.

**Staff Recommendation:** *CBOT should update the Committees on its progress in reviewing the proposals, and if a proposal is decided upon, complete the Committees' Fee Bill Questionnaire.*

**Board Response:**

As mentioned in the Board's 2016 Sunset report, there has been a historical disparity between revenue earned and the Board's expenditures. With prudent fiscal management and targeted expenditure reductions, for many years the Board's fund condition continued to support the fact that annual expenditures exceeded revenue earned.

Recognizing that this approach was insufficient to ensure long-term solvency, the Board adopted regulations establishing a two-step increase in renewal fees. This process resulted in modest fee effective July 1, 2017; the occupational therapist (OT) renewal fee increased from \$150 to \$220, and the occupational therapy assistant (OTA) renewal fee increased from \$150 to \$180. That increase was followed by another in January 2021, where the OT renewal fee increased from \$220 to \$270, and the OTA renewal fee increased from \$180 to \$220.

(Note: The renewal fees are currently the basis for the delinquent renewal fees and the initial license fees. Thus, the renewal fee increases in 2017 and 2021 also resulted in increases to the delinquent renewal fee and initial license fee revenue categories.)

Despite the recent fee increases and careful management, the disparity in annual revenue and expenditures continues to cause an on-going reduction in the number of months of operating reserves, putting the long-term health of the Board's fund at risk.

Thus, after considering various scenarios at several meetings, at its meeting on February 15, 2022, the Board tasked an ad hoc budget committee of two Board Members to work with the Board's Executive Officer to review revenue/expenditure information and different scenarios, including various fee increases and proposed new fees, to provide a recommendation to the full Board at its May 19-20 meeting. The ad hoc committee's held meetings to discuss the impact of varied fee increases on March 16<sup>th</sup> and March 23<sup>rd</sup>; another ad hoc committee meeting is scheduled for April 22<sup>nd</sup>.

Despite underspending its annual budget authority for the past 10+ years, the imbalance of revenue earned relative to its expenditures cannot continue. Most fees are at the statutory maximum and the few fees that can be raised in regulation are insufficient to ensure solvency. Thus, statutory authority to increase current fees and establish new fees is necessary.

The Board looks forward to developing a comprehensive fee package, including a variety of fee increases and the establishment of new fees, to ensure fiscal solvency. Once done, the Board will complete the Committee's Fee Bill questionnaire and work with the Senate and Assembly B&P Committees toward an acceptable solution.

### **ADMINISTRATIVE ISSUES**

#### **ISSUE #2: STAFF VACANCIES. Are additional changes or resources needed to address CBOT's staff vacancies?**

**Background:** CBOT reports 6.5 vacant positions of its 17.7 authorized positions, a vacancy rate of 37%. In addition, CBOT began succession planning efforts in late 2020 but reports that completion of a plan was hindered due to the COVID-19 pandemic, vacancies, and other priorities.

Specifically, CBOT reports that in July 2021, CBOT's Probation Monitor retired, and two other staff members accepted promotions at other state agencies. A Retired Annuitant who was hired to help with the Sunset Report and HR packages resigned due to health issues.

It also reports that one enforcement staff member returned to their former department effective February 1, 2022, but a new staff member joined February 7, 2022, and another will join April 7, 2022.

On November 1, 2021, a part-time Office Assistant retired, and on February 1, 2022, CBOT's Enforcement Manager retired. To assist in the interim, in January 2022 CBOT submitted a request for a current employee to serve in an out-of-class assignment as the acting Enforcement Manager; this request was approved in late February 2022. The out-of-class assignment was requested to provide oversight of the enforcement program until a permanent manager is recruited and hired. CBOT plans to submit the recruitment package for that position by March 15, 2022. CBOT reports in November 2021 a new Probation Monitor and Retired Annuitant (enforcement) were also hired.

CBOT reports that other position recruitment efforts will become a priority in 2022 and planned on hiring another Retired Annuitant in December 2021 to assist with re-classifying several positions and recruitment efforts to fill vacancies, however, the Retired Annuitant was unable to start working until late January 2022.

**Staff Recommendation:** *CBOT should update the Committees on its progress in filling its staff vacancies and completing its succession planning.*

#### **Board Response:**

Filling staff vacancies is a priority. In addition to the actions noted above, the Board:

- Submitted a recruitment package to DCA on March 9<sup>th</sup> to fill the Enforcement Manager position; the first round of interviews is scheduled April 19<sup>th</sup>.
- Submitted a recruitment package on March 18<sup>th</sup> to establish and fill an additional retired annuitant (RA) position to assist with updating or developing duty statements, preparing

recruitment packages, screening applications, interviewing candidates, and on-boarding new employees. The final filing date was April 8<sup>th</sup>; however, the date was extended to April 15<sup>th</sup> due to too few eligible applicants.

- Submitted a recruitment package on March 21<sup>st</sup> to establish and fill an office assistant (OA) position on a permanent, full-time basis, to replace the part-time, permanent intermittent OA position that was previously paid with blanket funds. The final filing date was April 8<sup>th</sup>, and the first round of interviews will be scheduled in late April.

Additional recruitment packages are in progress, including:

- A package to fill an analyst position and establish and fill a manager position over the Licensing and Administration; the anticipated date of submission to DCA is April 15<sup>th</sup>.
- A package to fill the Board's cashier position; the anticipated date of submission to DCA is April 29<sup>th</sup>. (The submission date of this package and the remainder of the recruitment packages is subject to the hiring of the additional RA and availability of the current RA.)

Filling the Board's vacancies is a high priority, and the Board looks forward to filling positions on a staggered basis with most, if not all, vacant positions filled by July 1, 2022.

### **LICENSING ISSUES**

#### **ISSUE #3: OCCUPATIONAL THERAPY CORPORATIONS. Should the Moscone-Knox Professional Corporation Act be amended to allow OTs to form professional corporations?**

**Background:** The Moscone-Knox Professional Corporation Act<sup>17</sup> authorizes the formation of various healing arts professional corporations and establishes which healing arts licensees who are not of the same license type as the corporation may be shareholders, officers, and directors of that corporation. Any person licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed by these professional corporations. Current law specifies that OTs may serve as a non-controlling director, shareholder, officer, or employee of a physical therapy corporation, but does not authorize OTs to form OT corporations.

There is no clear policy reason for the limitation—the act went into law with a handful of corporation types and has been amended on a case-by-case basis over time. That said, if OTs are added, there may be additional changes for CBOT to consider on the regulatory and licensing side once new business and care delivery models are formed.

**Staff Recommendation:** *The Committees may wish to amend the Moscone-Knox Professional Corporation Act to allow OTs to form professional corporations and consider whether additional licensing or regulatory requirements are needed if so.*

#### **Board Response:**

The Board appreciates the Committee raising the issue of adding occupational therapy professional corporations to the Moscone Knox Act. Since the issue of adding OT corporations didn't appear to be a consumer protection issue, it not been discussed by the Board since AB

1000 allowed “any person licensed under Division 2” to be employed by any professional corporation listed in the Corporations Act.

Given the prevalence of occupational therapy private practices, occupational therapy corporations being absent from the Moscone Knox Act is not in alignment with on-going OT business models. The Board looks forward to discussing the addition of OT corporations at a future meeting and working with the associations to work toward the best possible outcome.

**ISSUE #4: INDEPENDENT CONTRACTORS. Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for CBOT licensees working as independent contractors?**

**Background:** In the Spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly changed the factors that determine whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test comprised of three elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity’s business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The test, commonly referred to as the “ABC test,” potentially reaches into numerous fields and industries utilizing workers previously believed to be independent contractors, including occupations regulated by entities under the DCA. In the following year, AB 5 (Gonzalez), Chapter 296, Statutes of 2019 codified the *Dynamex* ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. As a result, the new ABC test must be applied and interpreted for all non-exempt licensed professionals.

**Staff Recommendation:** *CBOT should inform the committees of any discussions it has had about the *Dynamex* decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.*

**Board Response:**

The issue of AB 5 and the impact to the profession has not been discussed by the Board as the employee/employer relationship or contractor issue didn’t appear to be a practice or a consumer protection issue. However, the prevalence of OTs who are independent contractors suggests the value of the Board discussing an exemption to the Labor Code for contracting OTs at a future Board meeting. If it is determined that an exemption from the Labor Code for contracting OTs is the direction the Board wants to go, the Board will work with stakeholders and notify the Committees before submitting any legislative proposals.

**ISSUE #5: OTA WORKFORCE NEEDS. What steps has CBOT taken, or plans to take, related to the findings of the OTA workforce study discussed in its sunset report?**

**Background:** In 2019, the California Community Colleges Centers of Excellence for Labor Market Research, in collaboration with CBOT, conducted a California OTA Workforce Needs Assessment. It was the only state-level survey specifically focused on the California Occupational Therapy Assistant (OTA) workforce. The survey generated information on the supply of OTAs in California that is needed to plan for well-prepared and well-educated OTAs in sufficient numbers to meet the healthcare needs of the state.

The survey provided insight into the demographic composition of OTAs in California, their education, licensure, job characteristics such as work tasks, scheduling, and compensation, and the future of the OTA profession, including retirement and potential policy changes.

**Staff Recommendation:** *CBOT should update the Committees on its use of the information generated by the survey and any steps it plans to take in response to the report.*

**Board Response:**

The Board was provided a draft of the Executive Summary of the California OTA Workforce Needs Assessment (WF Study) and the final report was made available to the Board in October 2021. The WF Study was included as an agenda item for discussion at the Board’s November 2021 meeting. It was noted at that time that the information generated by the report could also serve as baseline content for a similar study for OTs in the future.

The Board plans to share the information with California’s OTA programs in an effort to create a collaborative partnership where ideas are shared, and conversations of meaning are started. The demographic information, along with recent educational and employment statistics and retirement projections, will assist the Board with developing policy and doing its part to help ensure that is an adequate supply of OTAs to meet the needs of California’s occupational therapy consumers.

The Board appreciates the California Community Colleges’ Centers of Excellence for Labor Market Research and Health Workforce Initiative for their partnership in the study and all those involved for conducting the OTA Workforce Needs Assessment.

**EDUCATION ISSUES**

**ISSUE #6: ADVANCED PRACTICE CERTIFICATES. Should advanced practice certificates continue to be required for new graduates, and should the certificates eventually be phased out?**

**Background:** When CBOT was established in 2000, it was not clear if there were sufficient national minimum education standards relating to providing certain services, including hand therapy; physical agent modalities; use of topical medications; and swallowing assessment, evaluation, or intervention.

As a result, those services were established as advanced practice areas in statute. Currently, OTs are required to meet education and competency and CBOT approval to provide services in advanced practice areas. However, national educational standards have begun to include these services as part of the base curriculum. CBOT reports that it will revisit this issue to determine the necessity of these requirements for OT students graduating after a certain date.

In the meantime, the oversight and approval of advanced practice course providers generates workload, taking staff time and requiring a subject matter expert's review. However, providers do not pay a fee approval. As mentioned under Issue #1 CBOT is exploring the possibility of charging a fee for approval of the course. It is also considering requiring a subsequent renewal because providers have failed to notify CBOT of course content updates and any changes in instructors, requiring CBOT to perform an additional review.

Given that the additional advanced practice requirements may be duplicative of the base education provided in OT training programs, and the approval of providers generates workload, it may be worth phasing the requirement out.

**Staff Recommendation: *CBOT should update the Committees on its review of the advanced practice requirements, including whether there are still consumer protection benefits and, if not, whether there is a potential timeline for phasing out the requirements.***

#### **Board Response:**

To ensure consumer protection without being a barrier to the profession, the Board has discussed the advanced practice requirements several times over the years. Different research studies have produced inconclusive evidence for the Board to take definitive action to eliminate or supplant the current advanced practice education and training hours requirements.

The Accreditation Council on Occupational Therapy Education (ACOTE), which accredits occupational therapy education programs, updated their standards (i.e., educational content and other requirements) in 2018, which went into effect July 31, 2020. The Board may find it useful to interview the OT schools, or partner with a university to do so, to glean their assessment of student competency in the areas of dysphagia, hand therapy and use of physical agent modalities (PAMs). It should be noted that ACOTE standards describe minimum educational content, but do not quantify the amount of time to be spent on the topics (e.g., number of hours spent vs. quarter-long or semester-long course); course delivery is left up to each individual program to determine how it will implement the standard.

If it is determined that educational institutions have equitable educational standards a discussion can ensue whether to continue the advanced practice education and training requirements for one or more of the advanced practice areas or remove them for future graduates if they are being met universally. Consumer protection benefits can only be ensured if all OT educational programs meet minimum national educational standards and provide similar, minimum entry-level competency.



## ***ENFORCEMENT ISSUES***

### **ISSUE #7: ENFORCEMENT TIMELINES. What factors prevent CBOT from meeting its enforcement targets, and what can be done to address them?**

**Background:** As noted on page 12 of this paper, there have been some instances where CBOT has not met its enforcement target timelines. Ideally, enforcement actions should be as expedient as possible. If a licensee is not practicing safely, appropriate action is needed to ensure the protection of the public. If a licensee has not committed or is at risk of committing any wrongdoing, they should be allowed to return to work as soon as possible. Further, drawn-out enforcement actions can be a drain on resources at licensing boards and other partnering agencies.

To help ensure that boards strive to resolve cases quickly, they establish target timelines. For cases not referred to the Office of the Attorney General (OAG) (PM3, no formal disciplinary action), CBOT's target is 270 days. CBOT did not meet this target in FY 2016-17 and was an average of 33 days over. In FY 2017-18, CBOT was an average of 26 days over its target.

For cases that are referred to the OAG (PM4, formal disciplinary action), CBOT's target is 540 days. It was not able to meet this target in FYs 2016-17 (an overage of 63 days over) and 2020-21 (an average of 84 days over). PM4 can be a difficult target to meet as formal discipline may involve wait times out of the board's control. They require a greater level of investigation and coordination with the OAG and potentially other agencies and states.

For FY 2016-17, CBOT had three cases that went over 1,200 days. CBOT reports that one case involved unprofessional conduct charges by a licensee that was residing and practicing in Oregon and Washington. From the point CBOT was advised of the incident until discipline was rendered by the two states, the matter took two years. In the second case, adjudication of a criminal conviction took 405 days with administrative adjudication taking 616 days. In the third case, a sworn investigation took 365 days with administrative adjudication taking 536 days.

For FY 2020-21, CBOT had three cases that took over three years from receipt of the complaint until discipline was rendered. One case took a total of 1,305 days which predominantly consisted of a sworn investigation that took 668 days. The other two cases taking 2,106 and 2,155 days respectively pertained to violations involving advanced practice services in hand therapy and physical agent modalities which required extensive records gathering and multiple reviews by an expert to render a decision on whether the practitioners deviated from standard practice.

While the complexity of certain cases and the involvement of other states appear to be contributors to the delays in PM4 cases there may still be ways to reduce timelines or identify potential areas of delay at the board, DCA's Division of Investigation, or the OAG. For PM3 cases, there may be factors that can help reduce delays in the boards' investigation, such as lack of knowledge on the part of licensees.

For example, Issue #3 from the prior sunset review discussed the fact that many of CBOT's violations result from involved ethical issues, documentation, supervision (or lack thereof), aiding and abetting

unlicensed practice, and failing to follow procedural license requirements, such as failing to complete continuing competence requirements or provide a timely address change.

At the time, the committee staff recommendation was to explore modifying the applicant attestation to include a statement that the applicant has read the laws and regulations or exploring an ethics training requirement. Ensuring licensees are aware of ethical requirements, as well as the extent of CBOT's authority, may reduce the number of required investigations or improve licensee compliance with CBOT investigative requests. CBOT has reported that it is still reviewing this matter.

***Staff Recommendation: CBOT should discuss any factors that may contribute to enforcement or investigation delays, and whether any steps are being taken to address them, including the use of an ethics or jurisprudence tool or requirement.***

**Board Response:**

Typically, the Board does a good job managing its enforcement cases and meets or exceeds its performance measure targets. A few cases that were atypical or outliers caused the Board to occasionally exceed the expected target(s). The Board also identified an error in case assignment data reported in FY 2016-17 and the Board is working with DCA to get the data corrected and looks forward to a corresponding update in the PMs published on the DCA website.

A budget change proposal authorizing additional enforcement staff provided the resources necessary to investigate the cases. Three new staff were hired in January 2017 and one in March 2017. One new position was reclassified and filled at the staff services manager level to provide appropriate supervision and manage the Board's enforcement program. After on boarding and training the new staff, these additional resources resulted in corresponding improvements in timeframes in subsequent fiscal years.

Given the Board's fiscal situation and more recently, the staff vacancies, it did not seem prudent to spend the money or resources on adding additional requirements to the initial license application or renewal application processes (i.e., a jurisprudence exam).

Once the Board's fund condition issue is resolved, the Board looks forward to determining whether current staffing levels are sufficient given the increase in licensees and corresponding increase in complaints and associated workload as well as developing strategies to further educate applicants and licensees with the goal of reducing the violations committed. These strategies could include, among other things, requiring an attestation regarding reading and understanding the Board's laws and regulations, requiring an ethics course at license renewal, or developing a jurisprudence examination. We look forward to providing the Committees an update on this issue in the future.

## COVID-19 ISSUES & RESPONSE

**ISSUE #8; COVID-19.** Since March of 2020, the DCA has approved waivers through the Governor's executive orders, which affect licensees and future licensees alike. Do any of these waivers warrant an extension or statutory changes?

**Background:** In response to the COVID-19 pandemic, the Governor issued executive orders to address the immediate COVID-19 pandemic, including impacts on the state's healthcare workforce stemming from the virus. On, March 4, 2020, the Governor issued a State of Emergency declaration, as defined in Government Code § 8558, which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to allow licensed healthcare professionals from outside of California to practice in California without a California license. Under BPC § 900, licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the EMSA director.

Following that executive order, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the DCA director to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic, including rules relating to examination, education, experience, and training.

One of the waivers helped address Issue #12 from the prior sunset review, which raised issues related to CBOT's ability to webcast meetings due to limited DCA resources and obligations with other boards. Since the pandemic, all meetings have been conducted virtually over the internet on the WebEx platform making meetings more accessible to the public, eliminating the need to webcast. It would be helpful to see whether waivers such as this should be extended beyond the State of Emergency.

**Staff Recommendation:** *CBOT should advise the Committees on the use of the COVID-19 waivers and the ongoing necessity of the waivers.*

### **Board Response:**

Currently there are no COVID-19 waivers in effect. The last waiver issued by DCA affecting licensees, including those whose licenses expired October 31, 2021, have until March 28, 2022, to complete their PDUs. The last waiver issued by DCA affecting limited permit holders, applied to those limited permits issued between August 1, 2021 – October 31, 2021, and extended them from three to six months (unless failing test result occurred before then).

Conducting meetings virtually is now accepted as common practice. Public access, participation, and input to meetings has increased through this platform and is also noted to have a cost savings effect. Hybrid models that include virtual and in-person meetings is an ongoing conversation within DCA. To date, we are unaware if there continues to be difficulties with applying for licensure, licensure examination, or training as current obligations appear to be more easily met as organizations and educational institutions have solidified a pandemic plan of action.

**ISSUE #9: COVID-19 PROVIDER MENTAL HEALTH. Under ordinary circumstances, the work of healthcare providers is mentally and emotionally challenging. Are there new issues arising from, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?**

**Background:** Throughout the COVID-19 pandemic, healthcare workers and first responders have been caring for COVID-19 patients through multiple deadly surges, including a record-shattering death toll in December of 2020. Even for those who do not directly treat COVID-19 patients, the events surrounding the pandemic, including lockdowns and isolation protocols have changed the landscape of care delivery.

The Centers for Disease Control notes that “[p]roviding care to others during the COVID-19 pandemic can lead to stress, anxiety, fear, and other strong emotions.... Experiencing or witnessing life-threatening or traumatic events impacts everyone differently. In some circumstances, the distress can be managed successfully to reduce associated negative health and behavioral outcomes. In other cases, some people may experience clinically significant distress or impairment, such as acute stress disorder, post-traumatic stress disorder (PTSD), or secondary traumatic stress (also known as vicarious traumatization). Compassion fatigue and burnout may also result from chronic workplace stress and exposure to traumatic events during the COVID-19 pandemic.”<sup>18</sup>

Healthcare workers are essential to the state of California. Given the length and the unique conditions of the COVID-19 pandemic, it may be beneficial to track trends and identify potential challenges and solutions in delivering mental health care and support for healthcare workers who have been under extreme physical and mental pressure since the start of the coronavirus pandemic.

**Staff Recommendation:** *CBOT should discuss any findings related to the mental and behavioral healthcare needs of frontline healthcare providers arising from the COVID-19 pandemic.*

**Board Response:**

The Board recognizes the impact on the mental and behavioral health needs of the OT practitioners (burnout, working overtime, holding multiple jobs, balancing the support of your clients, your family and yourself, loss of job and income due to vaccination status.)

Despite being overworked and experiencing burnout, it doesn't appear there has been an increase in complaints due to services provided, documentation time or resource availability or other impacts due to COVID.

Research has just begun on the impact of COVID to health care professionals and more specifically to occupational therapy practitioners. Once available, the Board looks forward to reviewing the research and findings in order to identify ways to better support the profession.

## **EDITS TO THE PRACTICE ACT**

### **ISSUE #10: TECHNICAL EDITS. Are there technical changes to the Practice Act that may improve CBOT's operations?**

**Background:** CBOT has suggested some technical changes to the Occupational Therapy Act in its report that may enhance or clarify the act or assist with consumer protection, including:

- A conforming change to the ability for OTs to supervise up to three OTAs at one time.
- An amendment acknowledging entry-level doctoral capstone experiences concerning supervised clinical practice.
- Other technical or conforming changes.

**Staff Recommendation:** *CBOT should continue to work with the Committees on potential changes.*

#### **Board Response:**

Given the Board's fiscal situation, the Board hopes the Committee would be supportive of establishing a Probation Monitoring fee to help offset the Board's costs associated with monitoring licensees placed on probation. This would reduce the costs passed onto the licensing population as a whole.

The Board also requests the ability to accept a surrender of a licensee in the absence of a legal pleading. New language could include the following:

#### **2570.33**

(a) Notwithstanding any other law, the board may, in its discretion, accept the surrender of a license through a stipulated agreement in the absence of a pleading when the ability of an occupational therapist or occupational therapy assistant to practice safely is impaired due to mental or physical illness.

(b) Until the time that the licensee signs the stipulated agreement for license surrender, the licensee may elect to have the disciplinary process conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The stipulated agreement in this alternative proceeding shall specify that:

(1) The license surrender shall be public information and shall be considered a disciplinary action.

(2) The licensee may petition the board for reinstatement after a period of not less than one year after the effective date of the decision.

(3) Any reinstatement proceeding shall be conducted pursuant to Section 2570.32.

(4) Upon seeking reinstatement, it is the responsibility of the former licensee to submit evidence of the ability to safely and competently practice occupational therapy.

## CONTINUED REGULATION OF THE PROFESSION

**ISSUE #11: SUNSET EXTENSION. Should the current CBOT be continued and continue regulating the practice of occupational therapy?**

**Background:** A review of the issues raised since the last review demonstrates that CBOT continues to protect the public and that it works towards improving its operations. However, there are still issues that need to be addressed, including its current budget deficit, its enforcement timelines and high prevalence of ethical and other non-practice-related violations, and the question of its advanced practice certificate requirements.

**Staff Recommendation:** *CBOT's current regulation of occupational therapy should be continued and reviewed again on a future date to be determined.*

**Board Response:**

The California Board of Occupational Therapy is privileged to regulate the profession of occupational therapy by serving and protecting California's consumers of OT services through effective regulation, licensure, and enforcement. We will continue to do so in hopes supporting, educating, and protecting all stakeholders of our services.

The Board appreciates the Committee staff suggestions and the recognition of the Board's role in protecting the public.

# UPDATE ON 2016 SUNSET REVIEW ISSUES

## SECTION 11 OF 2021 SUNSET REPORT

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

### **Additional Information**

The Board acknowledges there are duplicative requirements for out-of-state licensed and military applicants for licensure and that the processing times for organizations to provide documentation varies widely. The Board obtains primary source verification of applicant documentation, due in part to the fact that the Board completes a form for several different entities, attesting to primary source documentation verification.

While the Board does not have true reciprocity with other state licensing boards it does utilize the same educational and examination requirements as every other state. A significant apparent difference among the states is requiring the applicant to submit to a background check. The issue of an applicant submitting documents to multiple states may be addressed with the implementation of the (national) Occupational Therapy Licensure Compact (Compact). The states passing legislation to join the Compact, known as member states, will provide flexibility and reduce the number of times documentation must be submitted to multiple jurisdictions for licensees who practice in a member state. Further information, including state requirements, applicant requirements, and fees charged are still being developed.

All licensing programs under DCA expedite the licensure/registration process for any applicant that was honorably discharged from the Armed Forces and military spouses/domestic partners. Although this requirement does not mean that a license/registration must be issued, it can reduce the processing times of the review of an application and, if appropriate, the issuance of a license from 4 weeks to 2 weeks as long as the applicant has provided the required documentation.

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

### **Additional Information**

The Board did not follow up on the 'Fee Bill Worksheet' after the last Sunset Report as the Board had promulgated regulations increasing renewal fees in 2017 and 2021. However, due to the Board's current fund condition and the costs related to review the courses, the Board is evaluating the possibility of charging a fee for the application submitted by the OTs seeking approval to provide advance practice (AP) services.

The Board doesn't believe charging an application fee to course provider, or a fee to review the courses, is a viable revenue stream. Advanced practice requirements are California-specific, and it is not likely that a provider would willingly pay a fee when most states don't require OTs demonstrate competence prior to providing services in these practice areas. The Board will continue to explore potential revenue streams to bolster the Board's fund condition, including consideration of charging a fee for each Advance Practice Application for Approval a licensee submits.

Below are a few fee scenarios that display potential revenue that could offset the Board costs incurred for AP course review.

|                       | <b>FY 2019-2020</b>   | <b>FY 2020-2021</b>   |
|-----------------------|---|---|
|                       | <b>Estimated Revenue</b><br>(Based on 250<br>Applications Received) | <b>Estimated Revenue</b><br>(Based on 218<br>Applications Received) |
| \$100 application fee | \$25,000  | \$21,800  |
| \$150 application fee | \$37,500  | \$32,700  |
| \$200 application fee | \$50,000  | \$43,600  |

**ISSUE #7: *What has the CBOT discovered about current workforce trends since implementing its workforce survey?***

**Additional Information**

The Board was unable to run reports to retrieve demographic information due to limitations in BreEZe functionality; information provided by applicants and renewing licensees was ‘collected’ but there was no way to extract it. Therefore, the Board was unable to use the information to identify workforce trends, retirement projections, etc.

DCA implemented the Quality Business Interactive Reporting Tool (QBIRT) which provided a way to request reports and sort data. Unfortunately, QBIRT reports didn’t apply to the responses to the Board’s questions and data collection. Last year the Board submitted a ticket to DCA requesting OIS staff develop a report to extract the demographic information from the Board’ survey, which was based on data the Office of Statewide Health Planning and Development (OSHPD) required specified boards to collect and report to them.

The OSHPD was recently renamed the Department of Health Care Access and Information (HCAI) and the collection of specific information is now required of all healthcare boards. As a result of the expanded data collection and reporting requirements, DCA is implementing an update in BreEZe for all healthcare boards in July 2022. The new update will collect the data specified by HCAI; the questions will replace the Board’s current questions. Thus, the Board cancelled the request for development of a new report and looks forward to new data collection points and reporting capabilities in BreEZe after the July 2022 release.



Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Marc Berman, Chair

AB 2671 (Committee on Business and Professions) – As Introduced February 18, 2022

**SUBJECT:** California Board of Occupational Therapy: legislative review.

**SUMMARY:** Makes a technical change relating to the legislative review of the California Board of Occupational Therapy (CBOT).

**EXISTING LAW:**

- 1) Regulates the practice of occupational therapy under the Occupational Therapy Practice Act.(Business and Professions Code (BPC) §§ 2570-2571)
- 2) Establishes CBOT, until January 1, 2023, to administer and enforce the act. (BPC § 2570.19)

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

**COMMENTS:**

**Purpose.** Each year, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development hold joint sunset review oversight hearings to review the licensing boards under the Department of Consumer Affairs (DCA). The DCA boards are responsible for protecting consumers and the public and regulating the professionals they license. The sunset review process provides an opportunity for the Legislature, DCA, boards, and interested parties and stakeholders to discuss the performance of the boards and make recommendations for improvements.

Each board subject to review has an enacting statute that has a repeal date, which means each board requires an extension before the repeal date. This bill is one of the “sunset” bills that are intended to extend the repeal date of the boards undergoing sunset review, as well as include the recommendations from the sunset review oversight hearings.

This year, there are five sunset review bills authored by the Assembly Committee on Business and Professions and the five sunset review bills authored by the Chair of the Senate Business, Professions and Economic Development Committee.

**Background.** The California Board of Occupational Therapy (CBOT) is a licensing entity within the Department of Consumer Affairs (DCA). CBOT is responsible for administering and enforcing the Occupational Therapy Practice Act. The act contains the laws that establish CBOT and outline the licensure program, a regulatory framework for the practice, licensing, education, and discipline of licensed occupational therapists (OTs) and licensed occupational therapy assistants (OTAs). CBOT also regulates unlicensed occupational therapy aides that provide support services to OTs and OTAs.

Occupational therapy is the use of goal-directed activities (occupations) to support client participation, performance, and function at home, school, the workplace, and in 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. Common situations include helping children with disabilities to participate fully in school and develop social skills, helping people recovering from injury to regain function through retraining or adaptations, and providing support for older adults experiencing physical and cognitive changes.

At the end of the 2020-21 Fiscal Year (FY), CBOT reported a total of 18,862 active licensees, including 15,135 OTs and 3,727 OTAs.

CBOT's mission is:

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

*Scope of Practice.* OT services include assessment, treatment, education, and consultation. Specific techniques 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).

In addition to providing the services above, OTs with additional training may seek CBOT approval to perform specified advanced practices. These include hand therapy; physical agent modalities; use of topical medications; and swallowing assessment, evaluation, or intervention.

OTs also supervise OTAs and unlicensed aids. OTAs may provide any services that a supervising OT deems appropriate given the patient/client and the OTA's competence, except that the supervising OT cannot delegate the following:

- Interpretation of referrals or prescriptions for occupational therapy services.
- Interpretation and analysis for evaluation purposes.
- Development, interpretation, implementation, and modifications of the treatment plan and the discharge plan.

While OTAs may practice without the supervising OT physically present, the supervising OT is ultimately responsible for any care provided and must perform weekly reviews, document the supervision, be readily available for consultation, and periodically perform onsite reviews. OTAs may also supervise certain students and aids.

Unlicensed aides may perform routine tasks related to occupational therapy services. Non-client-related tasks include clerical, secretarial, and administrative activities; transportation of patients or clients; preparation or maintenance of treatment equipment and work area; taking care of patient or client personal needs during treatments; and assisting in the construction of adaptive equipment and splints.

Aides may also perform limited client-related tasks. The tasks must be routine and predictable and require no decision-making by the aide.

**Current Related Legislation.** AB 2684 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for the Board of Registered Nursing.

AB 2685 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for the Naturopathic Medicine Committee.

AB 2686 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for the Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board.

AB 2687 (Assembly Business and Professions Committee), which is pending in this Committee, is the sunset bill for The California Massage Therapy Council.

SB 1433 (Roth), which is pending in the Senate, is the sunset bill for the Bureau of Private Post Secondary Education.

SB 1434 (Roth), which is pending in the Senate, is the sunset bill for the State Board of Chiropractic Examiners.

SB 1436 (Roth), which is pending in the Senate, is the sunset bill for the Respiratory Care Board.

SB 1437 (Roth), which is pending in the Senate, is the sunset bill for the California Council for Interior Design Certification.

SB 1438 (Roth), which is pending in the Senate, is the sunset bill for the Physical Therapy Board of California.

**Prior Related Legislation.** AB 1706 (Committee on Business and Professions), Chapter 454, Statutes of 2017, was the previous sunset bill for the State Board of Chiropractic Examiners, Speech-Language Pathology, Audiology, and Hearing Aid Dispensers Board, CBOT, and Physical Therapy Board of California.

#### **ARGUMENTS IN SUPPORT:**

The *Occupational Therapy Association of California* writes in support of authorizing OTs to form professional corporations writes:

Currently, 18 different categories of healthcare providers are authorized to own their own professional corporations in California under the Moscone-Knox Act, including physicians, psychologists, speech-language pathologists, physical therapists, and midwives. OT practitioners are unfortunately not authorized to own professional corporations of their own, nor are they authorized to be shareholders of medical corporations. They are only authorized to be shareholders under physical therapists (PTs).

Amending the Monroe-Knox Act to include authorization for OT practitioners to own corporations of their own would remove an unnecessary barrier to OT practitioners who want to obtain ownership of their own practice or be majority shareholders. OT practitioners should have the choice of owning their own professional corporation, as well as being employed by a medical corporation. For these reasons, OTAC supports clarifying the law to add OT practitioners as owners of professional corporations, as well as adding OTs to the list of licensees authorized to be professional employees of a medical corporation.

**ARGUMENTS IN OPPOSITION:**

None on file

**SUNSET ISSUES FOR CONSIDERATION:**

In preparation for the sunset hearings, committee staff public background papers that identify outstanding issues relating to the entity being reviewed. The background paper is available on the Committee's website: <https://abp.assembly.ca.gov/jointsunsethearings>. While all of the issues identified in the background paper remain available for discussion, the following are currently being addressed in the amendments to this bill or otherwise actively discussed:

- 1) *Sunset Issue #1: Fund Condition*. What is needed to address CBOT's structural budget deficit?

As discussed on page 6 of the background paper, and under Issue #1 from the prior sunset review, CBOT has intentionally operated with less revenue than its expenses to reduce its reserve levels in compliance with statutory requirements. However, unless CBOT can increase its revenue, or further reduce its expenditures, it is projected to become insolvent by FY 2023-24.

While CBOT reports it is doing what it can to reduce expenditures, many cost pressures are out of its control. For example, each FY CBOT pays a DCA pro rata cost, which is intended to reimburse the DCA for services rendered to CBOT (and some services are unavoidable, such as teleconferencing and mail). However, it is a complex calculation that is difficult to budget for and can fluctuate widely year-to-year for any board. In FY 2020-21, CBOT's pro rata costs increased by approximately \$256,000, a 7% increase from the prior FY, making up 31% of CBOT's overall expenditures.

In addition, in July of 2019, the California Department of Justice announced that it was utilizing language included in the Governor's Budget authorizing it to increase the amount it billed to client agencies for legal services. The change was substantial: the attorney rate increased by nearly 30% from \$170 to \$220, the paralegal rate increased over 70% from \$120 to \$205, and the analyst rate increased 97% from \$99 to \$195. While justification was provided for why an adjustment to the rates was needed, the rate hike occurred almost immediately and without any meaningful notice to any client agencies.

CBOT also reports a large increase in expenditures on court reporters. The Office of Administrative Hearings contracts with court reporters to provide transcription services during a hearing. Recent contract amendments, changing from hourly to flat all day or one-half day rates (without regard to hearing length), as well as rates varying by geographical area, are attributed to the rising costs.

Other cost pressures out of CBOT's control include steady increases in state worker pay and benefits, rent, and general costs due to inflation. In addition, the overall workload increases as the licensee population also steadily increases.

As a result, it is unlikely that CBOT will be able to address its budget deficit through expenditure reduction. Therefore, it is currently considering increasing its fees but has not decided on any specific proposal. At the CBOT's recent February 15, 2022, board meeting,

staff discussed the budget issue and presented several proposals and budget scenarios. CBOT has several options, including a straight fee increase across all fees, seeking statutory changes to untether the initial license fee from the renewal fee, and creating new fees for certain services it provides for free, among other things. New fees could include minor services such as printing pocket cards or more major services such as approving advanced practice education providers.

CBOT did not make a decision at that meeting and created an ad hoc committee to review its budget and make recommendations on an appropriate proposal.

*Staff Recommendation:* CBOT should update the Committees on its progress in reviewing the proposals, and if a proposal is decided upon, complete the Committees' Fee Bill Questionnaire.

*CBOT's Response:*

As mentioned in the Board's 2016 Sunset report, there has been a historical disparity between revenue earned and the Board's expenditures. With prudent fiscal management and targeted expenditure reductions, for many years the Board's fund condition continued to support the fact that annual expenditures exceeded revenue earned.

Recognizing that this approach was insufficient to ensure long-term solvency, the Board adopted regulations establishing a two-step increase in renewal fees. This process resulted in modest fee effective July 1, 2017; the occupational therapist (OT) renewal fee increased from \$150 to \$220, and the occupational therapy assistant (OTA) renewal fee increased from \$150 to \$180. That increase was followed by another in January 2021, where the OT renewal fee increased from \$220 to \$270, and the OTA renewal fee increased from \$180 to \$220.

(Note: The renewal fees are currently the basis for the delinquent renewal fees and the initial license fees. Thus, the renewal fee increases in 2017 and 2021 also resulted in increases to the delinquent renewal fee and initial license fee revenue categories.)

Despite the recent fee increases and careful management, the disparity in annual revenue and expenditures continues to cause an on-going reduction in the number of months of operating reserves, putting the long-term health of the Board's fund at risk.

Thus, after considering various scenarios at several meetings, at its meeting on February 15, 2022, the Board tasked an ad hoc budget committee of two Board Members to work with the Board's Executive Officer to review revenue/expenditure information and different scenarios, including various fee increases and proposed new fees, to provide a recommendation to the full Board at its May 19-20 meeting. The ad hoc committee's held meetings to discuss the impact of varied fee increases on March 16th and March 23rd; another ad hoc committee meeting is scheduled for April 22nd.

Despite underspending its annual budget authority for the past 10+ years, the imbalance of revenue earned relative to its expenditures cannot continue. Most fees are at the statutory maximum and the few fees that can be raised in regulation are insufficient to ensure solvency. Thus, statutory authority to increase current fees and establish new fees is necessary.

The Board looks forward to developing a comprehensive fee package, including a variety of fee increases and the establishment of new fees, to ensure fiscal solvency. Once done, the Board will complete the Committee's Fee Bill questionnaire and work with the Senate and Assembly B&P Committees toward an acceptable solution.

- 2) *Sunset Issue #3: Occupational Therapy Corporations.* Should the Moscone-Knox Professional Corporation Act be amended to allow OTs to form professional corporations?

The Moscone-Knox Professional Corporation Act authorizes the formation of various healing arts professional corporations and establishes which healing arts licensees who are not of the same license type as the corporation may be shareholders, officers, and directors of that corporation. Any person licensed under the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed by these professional corporations. Current law specifies that OTs may serve as a non-controlling director, shareholder, officer, or employee of a physical therapy corporation, but does not authorize OTs to form OT corporations.

There is no clear policy reason for the limitation—the act went into law with a handful of corporation types and has been amended on a case-by-case basis over time. That said, if OTs are added, there may be additional changes for CBOT to consider on the regulatory and licensing side once new business and care delivery models are formed.

*Staff Recommendation:* The Committees may wish to amend the Moscone-Knox Professional Corporation Act to allow OTs to form professional corporations and consider whether additional licensing or regulatory requirements are needed if so.

*CBOT Response:*

The Board appreciates the Committee raising the issue of adding occupational therapy professional corporations to the Moscone Knox Act. Since the issue of adding OT corporations didn't appear to be a consumer protection issue, it not been discussed by the Board since AB 1000 allowed "any person licensed under Division 2" to be employed by any professional corporation listed in the Corporations Act.

Given the prevalence of occupational therapy private practices, occupational therapy corporations being absent from the Moscone Knox Act is not in alignment with on-going OT business models. The Board looks forward to discussing the addition of OT corporations at a future meeting and working with the associations to work toward the best possible outcome.

- 3) *Sunset Issue #4: Independent Contractors.* Does the new test for determining employment status, as prescribed in the court decision *Dynamex Operations West Inc. v. Superior Court*, have any unresolved implications for CBOT licensees working as independent contractors?

In the Spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly changed the factors that determine whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test comprised of three elements:

- A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
- B. That the worker performs work that is outside the usual course of the hiring entity's business; and
- C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

The test, commonly referred to as the "ABC test," potentially reaches into numerous fields and industries utilizing workers previously believed to be independent contractors, including occupations regulated by entities under the DCA. In the following year, AB 5 (Gonzalez), Chapter 296, Statutes of 2019, codified the Dynamex ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. As a result, the new ABC test must be applied and interpreted for all non-exempted licensed professionals.

*Staff Recommendation:* CBOT should inform the committees of any discussions it has had about the Dynamex decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.

*CBOT Response:* "The issue of AB 5 and the impact to the profession has not been discussed by the Board as the employee/employer relationship or contractor issue didn't appear to be a practice or a consumer protection issue. However, the prevalence of OTs who are independent contractors suggests the value of the Board discussing an exemption to the Labor Code for contracting OTs at a future Board meeting. If it is determined that an exemption from the Labor Code for contracting OTs is the direction the Board wants to go, the Board will work with stakeholders and notify the Committees before submitting any legislative proposals."

- 4) *Sunset Issue #10: Technical Edits.* Are there technical changes to the Practice Act that may improve CBOT's operations?

CBOT has suggested some technical changes to the Occupational Therapy Act in its report that may enhance or clarify the act or assist with consumer protection, including:

- A conforming change to the ability for OTs to supervise up to three OTAs at one time.
- An amendment acknowledging entry-level doctoral capstone experiences concerning supervised clinical practice.

- Other technical or conforming changes.

*Staff Recommendation:* CBOT should continue to work with the Committees on potential changes.

*CBOT Response:* "Given the Board's fiscal situation, the Board hopes the Committee would be supportive of establishing a Probation Monitoring fee to help offset the Board's costs associated with monitoring licensees placed on probation. This would reduce the costs passed onto the licensing population as a whole."

- 5) *Sunset Issue #11: Sunset Extension.* Should the current CBOT be continued and continue regulating the practice of occupational therapy?

A review of the issues raised since the last review demonstrates that CBOT continues to protect the public and that it works towards improving its operations. However, there are still issues that need to be addressed, including its current budget deficit, its enforcement timelines and high prevalence of ethical and other non-practice-related violations, and the question of its advanced practice certificate requirements.

*Staff Recommendation:* CBOT's current regulation of occupational therapy should be continued and reviewed again on a future date to be determined.

*CBOT Response:*

The California Board of Occupational Therapy is privileged to regulate the profession of occupational therapy by serving and protecting California's consumers of OT services through effective regulation, licensure, and enforcement. We will continue to do so in hopes supporting, educating, and protecting all stakeholders of our services.

The Board appreciates the Committee staff suggestions and the recognition of the Board's role in protecting the public.

#### **AMENDMENTS:**

- 1) *OT Corporations.* As noted under Sunset Issue #3, there is currently no policy reason for OTs to be unable to form their own corporations or serve as shareholders of a medical corporation. Therefore, the bill should be amended to create parity with other healing arts professions as follows:

Section 13401.5 of the Corporations Code is amended to read:

**13401.5.** Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating



the designated professional corporation. This section does not limit employment by a professional corporation designated in this section to only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section.

(a) Medical corporation.

(1) Licensed doctors of podiatric medicine.

[paragraphs (2)-(14) omitted]

*(15) Licensed occupational therapists*

[subdivisions (b)-(r) omitted]

*(s) Occupational therapy corporation*

*(1) Licensed physicians and surgeons*

*(2) Licensed doctors of podiatric medicine*

*(3) Licensed acupuncturists*

*(4) Naturopathic doctors*

*(5) Licensed physical therapists*

*(6) Licensed speech-language therapists*

*(7) Licensed audiologists*

*(8) Registered nurses*

*(9) Licensed psychologists*

*(10) Licensed physician assistants*

*(11) Licensed midwives*

*(12) Licensed clinical social workers*

*(13) Licensed marriage and family therapists*

*(14) Licensed occupational therapy assistants*

2) *Technical Changes*. As noted under Sunset Issue #10, there are technical changes that may clarify the practice act or improve CBOT's operations:

a) *OT/OTA Supervision Ratios*. To conform to the change allowing an OT to supervise up to three OTAs, this bill should be amended as follows:

Section 2570.3 of the Business and Professions Code is amended to read:

**2570.3.** [subdivisions (a)-(i) omitted]

(j) "Supervision of an occupational therapy assistant" means that the responsible occupational therapist shall at all times be responsible for all occupational therapy services provided to the client. The occupational therapist who is responsible for appropriate supervision shall formulate and document in each client's record, with ~~his or her~~ *the occupational therapist's* signature, the goals and plan for that client, and shall make sure that the occupational therapy assistant assigned to that client functions under appropriate supervision. As part of the responsible occupational therapist's appropriate supervision, ~~he or she~~ *the occupational therapist* shall conduct at least weekly review and inspection of all aspects of occupational therapy services by the occupational therapy assistant.

(1) The supervising occupational therapist has the continuing responsibility to follow the progress of each client, provide direct care to the client, and to assure that the occupational therapy assistant does not function autonomously.

(2) An occupational therapist shall not supervise more occupational therapy assistants, at any one time, than can be appropriately supervised in the opinion of the board. Three occupational therapy assistants shall be the maximum number of occupational therapy assistants supervised by an occupational therapist at any one time, but the board may permit the supervision of a greater number by an occupational therapist if, in the opinion of the board, there would be adequate supervision and the public's health and safety would be served. In no case shall the total number of occupational therapy assistants exceed ~~twice~~ *three* times the number of occupational therapists regularly employed by a facility at any one time.

b) *Section Numbering Issue*. There is a section of the practice act that does not conform to the California Code numbering format. Therefore, this bill should be amended to renumber BPC § 2570.185 to 2570.18.5.

3) *Sunset Extension*. As noted in Sunset Issue #11, CBOT's regulation should be continued and reviewed again. Therefore, the bill should be amended as follows:

Section 2570.19 of the Business and Professions Code is amended to read:

2570.19. (a) There is hereby created a California Board of Occupational Therapy, hereafter referred to as the board. The board shall enforce and administer this chapter.

[subdivisions (b)-(j) omitted]

(k) This section shall remain in effect only until January 1, ~~2023~~, 2027, and as of that date is repealed.

**REGISTERED SUPPORT:**

None on file

**REGISTERED OPPOSITION:**

None on file

**Analysis Prepared by:** Vincent Chee / B. & P. / (916) 319-3301

### **DISCUSSION AND POSSIBLE ACTION ON ADDING OCCUPATIONAL THERAPY PROFESSIONAL CORPORATIONS TO THE OCCUPATIONAL THERAPY PRACTICE ACT.**

The following are included for review:

- Corporations Code sections 13400- 13410
- Corporations language from various practice acts, including:
  - Psychological Corporations
  - Physical Therapy Corporations
  - Speech-Language Pathology Corporations and Audiology Corporations
  - LCSW Corporations
  - Optometric Corporations

## **PROFESSIONAL CORPORATIONS [13400 - 13410]**

### **13400.**

This part shall be known and may be cited as the “Moscone-Knox Professional Corporation Act.”

### **13401.**

As used in this part:

(a) “Professional services” means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) “Professional corporation” means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the California Board of Podiatric Medicine, the Osteopathic Medical Board of California, the Dental Board of California, the Dental Hygiene Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, or the State Board of Optometry shall not be required to obtain a certificate of registration in order to render those professional services.

(c) “Foreign professional corporation” means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) “Licensed person” means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is, or intends to become, an officer, director, shareholder, or employee.

(e) “Disqualified person” means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

### **13401.3.**

As used in this part, “professional services” also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).

**13401.5.**

Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation. This section does not limit employment by a professional corporation designated in this section to only those licensed professionals listed under each subdivision. Any person duly licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act may be employed to render professional services by a professional corporation designated in this section.

- (a) Medical corporation.
  - (1) Licensed doctors of podiatric medicine.
  - (2) Licensed psychologists.
  - (3) Registered nurses.
  - (4) Licensed optometrists.
  - (5) Licensed marriage and family therapists.
  - (6) Licensed clinical social workers.
  - (7) Licensed physician assistants.
  - (8) Licensed chiropractors.
  - (9) Licensed acupuncturists.
  - (10) Naturopathic doctors.
  - (11) Licensed professional clinical counselors.
  - (12) Licensed physical therapists.
  - (13) Licensed pharmacists.
  - (14) Licensed midwives.
- (b) Podiatric medical corporation.
  - (1) Licensed physicians and surgeons.
  - (2) Licensed psychologists.
  - (3) Registered nurses.
  - (4) Licensed optometrists.
  - (5) Licensed chiropractors.
  - (6) Licensed acupuncturists.
  - (7) Naturopathic doctors.
  - (8) Licensed physical therapists.
- (c) Psychological corporation.
  - (1) Licensed physicians and surgeons.
  - (2) Licensed doctors of podiatric medicine.
  - (3) Registered nurses.
  - (4) Licensed optometrists.
  - (5) Licensed marriage and family therapists.
  - (6) Licensed clinical social workers.
  - (7) Licensed chiropractors.

- (8) Licensed acupuncturists.
- (9) Naturopathic doctors.
- (10) Licensed professional clinical counselors.
- (11) Licensed midwives.
- (d) Speech-language pathology corporation.
- (1) Licensed audiologists.
- (e) Audiology corporation.
- (1) Licensed speech-language pathologists.
- (f) Nursing corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Licensed optometrists.
- (5) Licensed marriage and family therapists.
- (6) Licensed clinical social workers.
- (7) Licensed physician assistants.
- (8) Licensed chiropractors.
- (9) Licensed acupuncturists.
- (10) Naturopathic doctors.
- (11) Licensed professional clinical counselors.
- (12) Licensed midwives.
- (g) Marriage and family therapist corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed clinical social workers.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (8) Licensed professional clinical counselors.
- (9) Licensed midwives.
- (h) Licensed clinical social worker corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed marriage and family therapists.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (8) Licensed professional clinical counselors.
- (i) Physician assistant's corporation.
- (1) Licensed physicians and surgeons.
- (2) Registered nurses.
- (3) Licensed acupuncturists.
- (4) Naturopathic doctors.
- (5) Licensed midwives.

- (j) Optometric corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.
- (k) Chiropractic corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed optometrists.
- (6) Licensed marriage and family therapists.
- (7) Licensed clinical social workers.
- (8) Licensed acupuncturists.
- (9) Naturopathic doctors.
- (10) Licensed professional clinical counselors.
- (11) Licensed midwives.
- (l) Acupuncture corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed psychologists.
- (4) Registered nurses.
- (5) Licensed optometrists.
- (6) Licensed marriage and family therapists.
- (7) Licensed clinical social workers.
- (8) Licensed physician assistants.
- (9) Licensed chiropractors.
- (10) Naturopathic doctors.
- (11) Licensed professional clinical counselors.
- (12) Licensed midwives.
- (m) Naturopathic doctor corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed physician assistants.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Licensed physical therapists.
- (8) Licensed doctors of podiatric medicine.
- (9) Licensed marriage and family therapists.
- (10) Licensed clinical social workers.
- (11) Licensed optometrists.
- (12) Licensed professional clinical counselors.



- (13) Licensed midwives.
- (n) Dental corporation.
- (1) Licensed physicians and surgeons.
- (2) Dental assistants.
- (3) Registered dental assistants.
- (4) Registered dental assistants in extended functions.
- (5) Registered dental hygienists.
- (6) Registered dental hygienists in extended functions.
- (7) Registered dental hygienists in alternative practice.
- (o) Professional clinical counselor corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Licensed clinical social workers.
- (4) Licensed marriage and family therapists.
- (5) Registered nurses.
- (6) Licensed chiropractors.
- (7) Licensed acupuncturists.
- (8) Naturopathic doctors.
- (9) Licensed midwives.
- (p) Physical therapy corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Licensed acupuncturists.
- (4) Naturopathic doctors.
- (5) Licensed occupational therapists.
- (6) Licensed speech-language therapists.
- (7) Licensed audiologists.
- (8) Registered nurses.
- (9) Licensed psychologists.
- (10) Licensed physician assistants.
- (11) Licensed midwives.
- (q) Registered dental hygienist in alternative practice corporation.
- (1) Registered dental assistants.
- (2) Licensed dentists.
- (3) Registered dental hygienists.
- (4) Registered dental hygienists in extended functions.
- (r) Licensed midwifery corporation.
- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed marriage and family therapists.
- (5) Licensed clinical social workers.
- (6) Licensed physician assistants.
- (7) Licensed chiropractors.
- (8) Licensed acupuncturists.
- (9) Licensed naturopathic doctors.

(10) Licensed professional clinical counselors.

(11) Licensed physical therapists.

**13402.**

(a) This part shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this part, nor shall anything herein contained alter or affect any right or privilege, whether under any existing or future provision of the Business and Professions Code or otherwise, in terms permitting or not prohibiting performance of professional services through the use of any form of corporation permitted by the General Corporation Law.

(b) The conduct of a business in this state by a corporation pursuant to a license or registration issued under any state law, except laws relating to taxation, shall not be considered to be the conduct of a business as a professional corporation if the business is conducted by, and the license or registration is issued to, a corporation which is not a professional corporation within the meaning of this part, whether or not a professional corporation could conduct the same business, or portions of the same business, as a professional corporation.

**13403.**

The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary, and treasurer.

A professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. Each term of office may not exceed three years. Notwithstanding the foregoing, the articles or bylaws of a professional medical corporation with more than 200 shareholders may provide that directors who are officers of the corporation or who are responsible for the management of all medical services at one or more medical centers may have terms of office, as directors, of up to six years; however, no more than 50 percent of the members of the board, plus one additional member of the board, may have six-year terms of office.

**13404.**

A corporation may be formed under the General Corporation Law or pursuant to subdivision (b) of Section 13406 for the purposes of qualifying as a professional corporation in the manner provided in this part and rendering professional services. The articles of incorporation of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. Except as provided in subdivision (b) of Section 13401, no professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which such corporation is or proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code or the Chiropractic Act expressly authorizing such professional services to be rendered by a professional corporation.

**13404.5.**

(a) A foreign professional corporation may qualify as a foreign corporation to transact intrastate business in this state in accordance with Chapter 21 (commencing with Section 2100) of Division 1. A foreign professional corporation shall be subject to the provisions of the General Corporation Law applicable to foreign corporations, except where those provisions are in conflict with or inconsistent with the provisions of this part. The statement and designation filed by the foreign professional corporation pursuant to Section 2105 shall contain a specific statement that the corporation is a foreign professional corporation within the meaning of this part.

(b) No foreign professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which that corporation proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code expressly authorizing those professional services to be rendered by a foreign professional corporation.

(c) If the California board, commission, or other agency that prescribes the rules or regulations governing a particular profession either now or hereafter requires that the shareholders of the professional corporation bear any degree of personal liability for the acts of the corporation, either by personal guarantee or in some other form that the governing agency prescribes, the shareholders of a foreign corporation that has been qualified to do business in this state in the same profession shall, as a condition of doing business in this state, be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, as is prescribed by the governing agency for shareholders of a California professional corporation rendering services in the same profession.

(d) Each application by a foreign professional corporation to qualify to do business in this state shall contain the following statement:

“The shareholders of the undersigned foreign professional corporation shall be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, in California as is from time to time prescribed by the agency governing the profession in this state for shareholders in a California professional corporation rendering services in the same profession. This application accordingly constitutes a submission to the jurisdiction of the courts of California to the same extent, but only to the same extent, as applies to the shareholders of a California professional corporation in the same profession. The foregoing submission to jurisdiction is a condition of qualification to do business in this state.”

**13405.**

(a) Subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by that corporation in this state. A professional corporation may render professional services outside of this state, but only through employees who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. Nothing in this section is intended to prohibit the rendition of occasional professional services in another jurisdiction as an incident

to the licensee's primary practice, so long as it is permitted by the governing agency that regulates the particular profession in the jurisdiction. Nothing in this section is intended to prohibit the rendition of occasional professional services in this state as an incident to a professional employee's primary practice for a foreign professional corporation qualified to render professional services in this state, so long as it is permitted by the governing agency that regulates the particular profession in this state.

(b) Subject to Section 13404.5, a foreign professional corporation qualified to render professional services in this state may lawfully render professional services in this state, but only through employees who are licensed persons, and shall render professional services outside of this state only through persons who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. The foreign professional corporation may employ persons in this state who are not licensed in this state, but those persons shall not render any professional services rendered or to be rendered by the corporation in this state.

(c) Nothing in this section or in this part is intended to, or shall, augment, diminish or otherwise alter existing provisions of law, statutes or court rules relating to services by a California attorney in another jurisdiction, or services by an out-of-state attorney in California. These existing provisions, including, but not limited to, admission pro hac vice and the taking of depositions in a jurisdiction other than the one in which the deposing attorney is admitted to practice, shall remain in full force and effect.

#### **13406.**

(a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Business Oversight as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding and may be admissible in evidence therein. A shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall not enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of the shareholder's shares, and any purported voting trust, proxy, or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

#### **13407.**

Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a professional corporation, and any transfer in violation of this restriction shall be void, except as provided herein.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of the shareholder, as the case may be, then the certificate of registration of the corporation may be suspended or revoked by the governmental agency regulating the profession in which the corporation is engaged. In the event of such a suspension or revocation, the corporation shall cease to render professional services in this state.

Notwithstanding any provision in this part, upon the death or incapacity of a dentist, any individual named in subdivision (a) of Section 1625.3 of the Business and Professions Code may employ licensed dentists and dental assistants and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity of the dentist. The employment of licensed dentists and dental assistants shall not be deemed the practice of dentistry within the meaning of Section 1625 of the Business and Professions Code, provided that all of the requirements of Section 1625.4 of the Business and Professions Code are met. If an individual listed in Section 1625.3 of the Business and Professions Code is employing licensed persons and dental assistants, then the shares of a deceased or incapacitated dentist shall be transferred as provided in this section no later than 12 months from the date of death or incapacity of the dentist.

**13408.**

The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons of such corporation shall at any one time become disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged. In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

**13408.5.**

A professional corporation shall not be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Business Oversight or the Director of the Department of Managed Health Care may refer any suspected violation of those provisions to the governmental agency regulating the profession in which the corporation is or proposes to be engaged.

**13409.**

(a) Subject to Section 201, a professional corporation may adopt any name permitted by a law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the governmental agency regulating that profession. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which that professional corporation is engaged. The statements of fact in those affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) Subject to Section 201, a foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in those affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

**13410.**

(a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services.

(b) With respect to any foreign professional corporation qualified to render professional services in this state, each such governmental agency shall adopt rules, regulations, and orders as appropriate to restrict or prohibit any disqualified person from doing any of the following:

- (1) Being a shareholder, director, officer, or employee of the corporation.
- (2) Rendering services in any profession in which he or she is a disqualified person.
- (3) Participating in the management of the corporation.
- (4) Sharing in the income of the corporation.

## **ARTICLE 9**

### **PSYCHOLOGICAL CORPORATIONS**

#### **2995.**

A psychological corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are psychologists, podiatrists, registered nurses, optometrists, marriage and family therapists, licensed professional clinical counselors, licensed clinical social workers, chiropractors, acupuncturists, or physicians are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs.

#### **2996.**

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

#### **2996.1.**

A psychological corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a person licensed under this chapter.

#### **2996.2.**

The income of a psychological corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the psychological corporation.

#### **2997.**

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a psychological corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

#### **2998.**

The name of a psychological corporation and any name or names under which it may render professional services shall contain one of the words specified in subdivision (c) of Section 2902, and wording or abbreviations denoting corporate existence.

#### **2999.**

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a psychological corporation shall include a provision whereby the capital stock of that corporation owned by a disqualified person, as defined in Section 13401 of the Corporations Code, or a deceased person, shall be sold to the corporation or to the remaining shareholders of that corporation within any time as those regulations may provide, and (b) that a psychological corporation shall provide adequate security by insurance or otherwise for claims against it by its patients or clients arising out of the rendering of professional services.



#### **§2688.5. Report to the Legislature**

The board shall submit a report to the fiscal and appropriate policy committees of the legislature whenever the board increases any fee. The report shall specify the justification for the increase and the percentage of the fee increase to be used for enforcement purposes.

#### **§2689. Special Certification Fees**

(a) The board may establish by regulation suitable application and renewal fees of not more than two hundred dollars (\$200), for persons certified to perform electromyographical testing pursuant to Section 2620.5, based upon the cost of operating the certification program. The application fee shall be paid by the applicant at the time the application is filed and the renewal fee shall be paid as provided in Section 2683.

(b) The board shall charge an examination and reexamination fee of five hundred dollars (\$500) to applicants who are examined and who have been found to otherwise meet the board's standards for certification.

### **Article 10: Physical Therapy Corporations**

#### **§2690. Definition**

A physical therapy corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are physical therapists are in compliance with the Moscone-Knox Professional Corporation Act, this article and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a physical therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Physical Therapy Board of California.

#### **§2691. Unprofessional Conduct - Licensee**

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

#### **§2692. Unprofessional Conduct - Corporation**

A physical therapy corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute or regulation, now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by such statutes and regulations to the same extent as a person holding a license under this chapter.

**§2693. Corporation Name**

The name of a physical therapy corporation and any name or names under which it may render professional services shall contain the words “physical therapy” or “physical therapist”, and wording or abbreviations denoting corporate existence.

**§2694. Directors and Officers**

Except as provided in Section 13403 of the Corporations Code, each shareholder, director and officer of a physical therapy corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401 of the Corporations Code.

**§2695. Income**

The income of a physical therapy corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of such shareholder or his or her shares in the physical therapy corporation.

**§2696. Regulations**

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, including regulations requiring (a) that the bylaws of a physical therapy corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in Section 13401 of the Corporations Code), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time as the regulations may provide, and (b) that a physical therapy corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

## **SPEECH-LANGUAGE PATHOLOGY CORPORATIONS AND AUDIOLOGY CORPORATIONS [2536 - 2537.5]**

### **2536.**

A speech-language pathology corporation or an audiology corporation is a corporation which is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are speech-language pathologists or audiologists are in compliance with the Moscone-Knox Professional Corporation Act, this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs.

With respect to a speech-language pathology corporation or an audiology corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Speech-Language Pathology and Audiology Board.

### **2537.**

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

#### **2537.1.**

A speech-language pathology corporation or an audiology corporation shall not do or fail to do any act that the doing or failing to do would constitute unprofessional conduct under any statute or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by those statutes and regulations to the same extent as a person holding a license under this chapter.

#### **2537.2.**

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each shareholder, director and officer of a speech-language pathology corporation or an audiology corporation, except an assistant secretary and an assistant treasurer, shall be a licensed person as defined in Section 13401.

#### **2537.3.**

The income of a speech-language pathology corporation or an audiology corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in Section 13401 of the Corporations Code, shall not in any manner accrue to the benefit of that shareholder or his or her shares in the speech-language pathology or audiology corporation.

#### **2537.4.**

(a) The name of a speech-language pathology corporation under which it may render professional services shall include one of the words specified in subdivision (a) of Section 2530.3 and the word "corporation" or wording or abbreviations denoting corporate existence.

(b) The name of an audiology corporation under which it may render professional services shall include one of the words specified in subdivision (b) of Section 2530.3 and the word “corporation” or wording or abbreviations denoting corporate existence.

**2537.5.**

The board may adopt and enforce regulations to carry out the purposes and objectives of this article, and the Moscone-Knox Professional Corporation Act, including regulations requiring any of the following:

(a) That the bylaws of a speech-language pathology corporation or an audiology corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person as defined in Section 13401 of the Corporations Code, or by the estate of a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within that time as the regulations may provide.

(b) That a speech-language pathology corporation or an audiology corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

## **ARTICLE 5. Licensed Clinical Social Workers Corporations [4998 - 4998.5]**

### **4998.**

A licensed clinical social worker corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With respect to a licensed clinical social worker corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

### **4998.1.**

It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), or any regulations duly adopted under those laws.

### **4998.2.**

Notwithstanding Section 4996, the name of a licensed clinical social worker corporation and any name or names under which it may be rendering professional services shall contain the words "licensed clinical social worker" and wording or abbreviations denoting corporate existence. A licensed clinical social worker corporation that conducts business under a fictitious business name shall not use any name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, that the business is conducted by a licensed clinical social worker corporation.

### **4998.3.**

Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of a licensed clinical social worker corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act.

**4998.4.**

The income of a licensed clinical social worker corporation attributable to professional services rendered while a shareholder is a disqualified person, as defined in the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), shall not in any manner accrue to the benefit of that shareholder or his or her shares in the licensed clinical social workers corporation.

**4998.5.**

A licensed clinical social worker corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule, or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by those statutes, rules, and regulations to the same extent as a person holding a license as a licensed clinical social worker.

## **ARTICLE 8**

### **OPTOMETRIC CORPORATIONS**

#### **3160.**

An optometric corporation is a corporation that is authorized to render professional services, as described in Sections 13401 and 13401.5 of the Corporations Code, if that corporation and its shareholders, officers, directors, and employees rendering professional services who are physicians and surgeons, psychologists, registered nurses, optometrists, or podiatrists are in compliance with the Moscone-Knox Professional Corporation Act as contained in Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code, the provisions of this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to the corporation and the conduct of its affairs. With respect to an optometric corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the California State Board of Optometry.

#### **3163.**

Except as provided in Section 3078, the name of an optometric corporation and any name or names under which it may be rendering professional services shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders and shall include the words optometric corporation or wording or abbreviations denoting corporate existence, provided that the articles of incorporation shall be amended to delete the name of a former shareholder from the name of the corporation within two years from the date the former shareholder dies or otherwise ceases to be a shareholder.

#### **3164.**

Except as provided in Sections 13401.5 and 13403 of the Corporations Code, each director, shareholder, and officer of an optometric corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act.

#### **3165.**

The income of an optometric corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Moscone-Knox Professional Corporation Act) shall not in any manner accrue to the benefit of such shareholder for his shares in the optometric corporation.

#### **3166.**

An optometric corporation shall not do or fail to do an act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule, or regulation. In conducting its practice, an optometric corporation shall observe and be bound by statutes, rules, and regulations to the same extent as a person holding a license under Section 3055.

**3167.**

The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of an optometric corporation shall include a provision whereby the capital stock of such corporation owned by a disqualified person (as defined in the Moscone-Knox Professional Corporation Act), or a deceased person shall be sold to the corporation or to the remaining shareholders of such corporation within such time as such rules and regulations may provide; and (b) that an optometric corporation as a condition of obtaining a certificate pursuant to the Moscone-Knox Professional Corporation Act and this article shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.