Section 4 – Licensing Program

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

CCR section 4112 requires that the Board provide written notice to an applicant whether their application is complete or deficient within 30-days of the Board's receipt of the application. Internal statistics for the last three FYs reflect that the Board is meeting the established expectation. It takes an average of 22 days for the Board to provide an applicant written notice whether the application is complete or incomplete.

16. Describe any increase or decrease in average time to process applications, administer exams and/or issue licenses. Have pending applications grown at a rate that exceeds completed applications? If so, what has been done to address them? What are the performance barriers and what improvement plans are in place? What has the board done and what is the board going to do to address any performance issues, i.e., process efficiencies, regulations, BCP, legislation?

The Board is meeting its regulatory goal in processing applications and notifying applicants within 30 days of the status of their application, so pending applications have not grown at a rate that is not manageable. On occasion, when the Board has been in jeopardy of exceeding the 30 day notification period it has been able to redirected staff resources. Such times usually occur for very short durations and are around graduation periods. The Board will continue to monitor the processing times and take appropriate steps to seek additional staff through the BCP process and/or consider legislative or regulatory change if it is not able to meet the standards established in CCR 4112.

17. How many licenses or registrations does the board issue each year? How many renewals does the board issue each year?

Table 6. Licensee Population

		FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Occupational Therapist	Active	Data Not available	3,425	4,123	4,239
	Inactive		271	358	326
	Out-of-State		338	386	384
	Out-of-Country		20	15	24
	Delinquent *		230	304	321

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Occupational Therapy Assistant	Active	Data Not available	546	717	711
	Inactive		46	59	63
	Out-of-State		48	63	66
	Out-of-Country		0	0	0
	Delinquent *		33	54	45

* Delinquent license renewals processed are not accounted for in the active and inactive totals.

Table 7. Total Licensing Data			
	FY 2009/10	**FY 2010/11**	**FY 2011/12**
Initial Licensing Data:			
Initial OT License Applications Received	621	730	826
Initial OT License Applications Approved	606	672	831
Initial OT License Applications Closed	6	11	41
OT Licenses Issued	598	649	80???
Initial OTA License Applications Received	118	145	180
Initial OTA License Applications Approved	105	139	163
Initial OTA License Applications Closed	0	3	6
OTA Licenses Issued	109	134	162
Initial License/Initial Exam Pending Application Data:			
Pending OT Applications (total at close of FY)	156	205	180
Pending OT Applications (outside of board control)*	Data not available		
Pending OT Applications (within the board control)*			
Pending OTA Applications (total at close of FY)	30	32	470
Pending OTA Applications (outside of board control)*	Data not available		
Pending OTA Applications (within the board control)*			
Initial License/Initial Exam Cycle Time Data (Weighted average):			
OTs - Average Days to Application Approval (*complete* apps)*	23	24	21
OTs - Average Days to Application Approval (*incomplete* apps)*	90	79	59
OTAs - Average Days to Application Approval (*complete* apps)*	24	24	21
OTAs - Average Days to Application Approval (*incomplete* apps)*	81	70	64
License Renewal Data:			
Licenses Renewed	***See Table 6 above***		

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18. How does the board verify information provided by the applicant?

a. What process is used to check prior criminal history information, prior disciplinary actions, or other unlawful acts of the applicant?

When an applicant submits their application for licensure, each applicant is required to disclose whether any health related professional licensing or disciplinary body in any state, territory or foreign jurisdiction has ever denied, limited, placed on probation, restricted, suspended, cancelled or revoked any professional license, certificate, or registration, or imposed a fine, reprimand, or taken any other disciplinary action against any license or certificate they hold or have ever held. If the applicant discloses another license on their application, they are required to submit a license certification/verification from the issuing authority. The license certification/verification is used as a primary source means to determine if the applicant had a license or certificate that had been disciplined by another state or province. (This process also assists the Board in determining if the applicant has been truthful in the application process.)

Each applicant is also required to disclose any past misdemeanor or felony convictions, regardless of the age of the conviction or whether the matter has been expunged. As part of the licensure process, each applicant is required to submit their fingerprints for processing through the California Department of Justice and the Federal Bureau of Investigation for processing at both the State and Federal levels. (This process also assists the Board in determining if the applicant has been truthful in the application process.)

Any applicant who holds or has held any other health related license or certificate in any state (including California), province, or country, or if the applicant discloses any misdemeanor or felony convictions, is enrolled in the *Continuous Query* feature of the National Practitioner Databank and Healthcare Integrity & Protection Databank (federally maintained databanks). The enrollment in *Continuous Query* feature of the federal data banks allows the Board to obtain notification of any disciplinary action taken by a health related professional licensing or disciplinary body in any state or United States territory, or other mandated reporters. (*More information below in response to question 19d.*) This "flag" provides notice to the Board to seek additional information from the reporting entity.

b. Does the board fingerprint all applicants?

As part of the licensure process, each applicant is required to submit their fingerprints for processing through the California Department of Justice and the Federal Bureau of Investigation. Applicants can submit their fingerprints electronically if they access one of several hundred LiveScan locations in California; applicants located out of state must submit fingerprint cards directly to the Board. Whether fingerprints are submitted via LiveScan or fingerprint cards, no applicant is approved for licensure

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until the background check from both the Department of Justice and Federal Bureau of Investigation is received by the Board.

c. Have all current licensees been fingerprinted? If not, explain.

The fingerprint process not only verifies whether an applicant has been convicted of crimes in the past, but also provides the Board subsequent arrest information. Thus, the fingerprint image is 'maintained' by the Department of Justice.

However, in the event that a record of the submission of fingerprints no longer exists, as a condition of renewal, regulations were amended to require licensees to furnish a set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit fingerprints on or before the date required for renewal of a license is grounds for discipline by the Board.

All current licensees have either been fingerprinted or have been identified as needing to submit their fingerprints prior to renewing their license in an Active status.

In February 2010, the Board identified 108 licensees whose fingerprints were not on file with the California Department of Justice. Board staff developed an in-house renewal form that was mailed to each of the 108 licensees. Each licensee was required to provide proof to the Board that they had submitted their fingerprints prior to renewing their license in an Active status. This proof was in the form of either a Live Scan form or a fingerprint hard card.

Since that time, seven of the 180 licensees have been cancelled (due to being delinquent for 5 years); the other 19 licensees either have their license in Inactive status or their license is delinquent.

d. Is there a national databank relating to disciplinary actions? Does the board check the national databank prior to issuing a license? Renewing a license?

There are two data banks maintained by the federal government that the board reports certain designated actions to: the National Practitioner Data Bank (NPDB) and the Healthcare Integrity & Protection Data Bank (HIPDB). (Hereafter "databanks") The intent of the databanks is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners from moving from state to state without disclosure or discovery of previous medical malpractice payment or other adverse action.

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Adverse actions can involve action taken against licensure, clinical privileges, and professional society membership.

Reporters to the NPDB include, but are not limited to:

- Medical malpractice payers
- State health care practitioner licensing boards
- Hospitals
- Other health care entities with formal peer review (e.g., HMOs, managed care organizations, etc.)
- Professional societies with formal peer review
- State entity licensing and certification authorities
- Peer review organizations
- Drug Enforcement Agency
- Health and Human Services' Office of the Inspector General

The purpose of the HIPDB is to combat fraud and abuse in health insurance and health care delivery and to promote quality care. The HIPDB is primarily a flagging system that may alert users that a more comprehensive review of a practitioner's past actions may be prudent. HIPDB information is intended to be used in combination with information from other sources (e.g., evidence of current competence through continuous quality improvement studies, peer recommendations, verification of training and experience, and relationships with organizations) in making determinations on employment, affiliation, certification, or licensure decisions.

Reporters to the HIPDB include, but are not limited to:

- Federal and State Government Agencies
- Health Plans

The Board *reports* disciplinary actions taken against applicants and licensees to both databanks; the Board enrolls into both databanks (or *queries)* those applicants who possess an out-of-state healthcare-related license and those who disclose prior criminal history.

"Continuous Query" is a service that monitors enrolled licensees for adverse actions and medical malpractice payment history 24 hours a day/365 days per year for a one-time enrollment fee, which is then subject to annual renewal. This important tool assists the Board by facilitating the review of an applicant's past disciplinary actions, as well as ensuring the Board is notified of any future disciplinary actions taken against the licensee by another reporting entity.

The Board utilizes the Continuous Query function for applicants as well as licensees placed on probation. When initially enrolled, the Board receives a comprehensive history of disciplinary actions taken against the applicant or licensee and then

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continues to receive email notifications within 24 hours of either databank receiving a report from a reporting entity, subject to continued enrollment (or annual renewal).

While the Board currently bears the cost of querying the databanks (the fee is $6.50), the Board had been optimistic that Senate Bill 544 would have passed and addressed the financial impact to this important consumer protection tool.

(Note: SB 544 would have required all health care licensing Board(s) to query the NPDB before granting a license to an applicant and before granting a petition for reinstatement of a revoked or surrendered license. This bill would also have allowed the Board to charge the applicant a fee to cover the Board's actual cost of the query, allowing the Board to check all applicants. While this bill died in committee, the Board hopes that this issue will be addressed in a future bill by the Joint Legislative Sunset Review Committee.)

e. Does the board require primary source documentation?

The Board requires primary source documentation (e.g. educational transcripts issued by the university or college, verification of passage of the examination issued by the vendor, license verifications issued by another state agency, court documents relating to convictions issued by the appropriate court system, etc.) to ensure the accuracy of the document submitted. Primary source documentation also assists the Board in determining if the applicant has been truthful in the application process, when the documentation submitted is compared to the information the applicant has provided on the application form.

19. Describe the board's legal requirement and process for out-of-state and out-of-country applicants to obtain licensure.

The Board does not have reciprocity with any other state licensing board. Any person from another state seeking licensure in California as an occupational therapist or occupational therapy assistant will need to demonstrate compliance with all licensing requirements, including demonstrating minimum entry-level competence. This is demonstrated by completion of specific educational and supervised fieldwork requirements set forth in BPC section 2570.6 and successful completion of the entry-level examinations administered by NBCOT.

Occupational therapists trained outside of the United States are required to complete the educational and supervised fieldwork requirements set forth in BPC section 2570.6 and successfully complete the entry-level certification examination administered by NBCOT. (There are no occupational therapy assistant programs recognized by the World Federation of Occupational Therapists; only US graduates of occupational therapy assistant programs can take the NBCOT certification examination.) Additionally, pursuant to BPC 30, an applicant shall provide his or her social security number before a license can be issued.

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An individual applying for a license as an occupational therapist or as an occupational therapy assistant shall submit a completed application and demonstrate to the Board, that he or she meets all of the requirements set forth in BPC 2570.6:

(a) That the applicant is in good standing and has not committed acts or crimes constituting grounds for denial of a license under Section 480.

(b)(1) That the applicant has successfully completed the academic requirements of an educational program for occupational therapists or occupational therapy assistants that is approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program.

(c) (1) For an applicant who is a graduate of an occupational therapy or occupational therapy assistant educational program who is unable to provide evidence of having met the requirements of paragraph (2) or (3) of subdivision (b), he or she may demonstrate passage of the examination administered by the National Board for Certification in Occupational Therapy, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association, as evidence of having successfully satisfied the requirements of paragraph (2) or (3) of subdivision (b).

(2) For an applicant who completed AOTA's Career Mobility Program, he or she shall demonstrate participation in the program and passage of the examination administered by the National Board for Certification in Occupational Therapy, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association, as evidence of having successfully satisfied the requirements of paragraphs (1) and (2) of subdivision (b).

(d) That the applicant has successfully completed a period of supervised fieldwork experience approved by the board and arranged by a recognized educational institution where he or she met the academic requirements of subdivision (b) or (c) or arranged by a nationally recognized professional association. The fieldwork requirements for applicants applying for licensure as an occupational therapist or as an occupational therapy assistant shall be consistent with the requirements of the ACOTE accreditation standards, or AOTA's predecessor organization, or AOTA's Career Mobility Program, that were in effect when the applicant completed his or her educational program.

(e) That the applicant has passed an examination as provided in Section 2570.7.

(f) That the applicant, at the time of application, is a person over 18 years of age, is not addicted to alcohol or any controlled substance, and has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

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The law allows an OT or OTA who holds a current, active, and non-restricted license issued by another state with requirements at least as stringent as California, may work in California for 60 days from the date an application for licensure is received by the Board; the OT or OTA must work in association with a California-licensed OT. Any applicant who holds or has ever held a license, registration, or certificate in any health-related profession, including occupational therapy, in any state, province, or country, he/she must request a letter of good standing from each of those jurisdictions.

Other than those items listed above the application process is the same for new graduates, or applicants from out of state or country.

20. Does the board send No Longer Interested notifications to DOJ on a regular and ongoing basis? Is this done electronically? Is there a backlog? If so, describe the extent and efforts to address the backlog.

The Board submits No Longer Interested (NLI) notifications to DOJ when a license is cancelled, surrendered, or revoked, and when an application is abandoned. The NLI notifications are either faxed or mailed to DOJ, depending on the amount of NLIs being submitted to DOJ.
Due to the fact that some applicants submit their fingerprints but never submit an application, there is also an internal policy that requires Board staff to submit the NLI if an application is not received from the applicant within 60 days of receipt of the DOJ or FBI information, whichever occurs latest.

21. Describe the examinations required for licensure. Is a national examination used? Is a California specific examination required?

One requirement for licensure is that applicants must successfully apply for and complete the entry-level certification examination for occupational therapists or occupational therapy assistants administered by the NBCOT. A Califonria

22. What are pass rates for first time vs. retakes in the past 4 fiscal years? ***(Refer to Table 8: Examination Data)***

Examinations

Table 8. Examination Data	
California Examination (include multiple language) if any.	
NOT APPLICABLE – NO STATE-SPECIFIC EXAMINATION REQUIRED	
National Examination (include multiple language) if any:	
License Type	**Occupational Therapist**
Exam Title	***OCCUPATIONAL THERAPIST REGISTERED - OTR***

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		1st Time Candidates	Retakes
2008	Pass %	85%	40%
2009	Pass %	48%	53%
2010	Pass %	82%	53%
2011	Pass %	84%	51%
Date of Last OA; Name of OA Developer		2009 - NBCOT	
National Examination (include multiple language) if any:			
License Type		**Occupational Therapy Assistant**	
Exam Title		***CERTIFIED OCCUPATIONAL THERAPY ASSISTANT – COTA***	
		1st Time Candidates	**Retakes**
2008	Pass %	83%	49%
2009	Pass %	86%	51%
2010	Pass %	84%	44%
2011	Pass %	81%	57%
Date of Last OA; Name of OA Developer		2009 - NBCOT	

23. Is the board using computer based testing? If so, for which tests? Describe how it works. Where is it available? How often are tests administered?

The NBCOT uses computer-based testing for both the occupational therapist (OTR) and occupational therapy assistant (COTA) examinations. The examinations are administered at Prometric Test Centers (PTC) worldwide. PTCs delivers and administers tests through a network of more than 10,000 testing centers in more than 160 countries. Most PTCs are open six days a week and many centers have evening hours as well.

There are two ways a candidate can apply for the examinations – online or by mail using a hardcopy application. Both options are available via the NBCOT's web site (www.nbcot.org) including the hardcopy option which can be downloaded. Candidates are strongly encouraged to review the Certification Examination Handbook, posted to NBCOT's web site, prior to applying for the exam. The Handbook has been developed to provide exam candidates with the information they need to complete and successfully submit a certification examination application.

All candidates are required to answer the Character questions on the exam application and for those who respond affirmatively, comply with related documentation requirements. Candidate's requesting special testing accommodations must indicate this request on the application and comply with associated documentation requirements. Reporting services are available to all candidates as part of the exam application process including: 1) Confirmation of Examination Registration and Eligibility to Examine Notice and 2) Official Score Transfer.

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After the candidate has submitted an exam application and fee, they MUST arrange to submit an Official Final Transcript or an Academic Credential Verification Form (ACVF). The ACVF may be submitted in the event that the official transcript is not final with the understanding that the final transcript must be submitted upon graduation. Please see the NBCOT Certification Examination Handbook on the web site for the ACVF policy.

Once an exam application has been approved, the candidate is provided with an Authorization to Test (ATT) letter. The ATT letter authorizes the candidate to take the certification examination and is active for 90 days. Upon receipt of an ATT letter, a candidate can then proceed with contacting PTC to schedule a date, time and location to test.

The exam is scored according to the dates indicated on the scoring calendar. The scoring calendar is posted to the NBCOT's web site. Following each scoring date, candidates are able to access their pass/fail status through their online account. The official score report is then mailed in hard copy to the candidate. The Board is provided examination scores if the candidate requests the score report is provided to the Board; candidate score reports are provided to the Board twice monthly via electronic notification.

24. Are there existing statutes that hinder the efficient and effective processing of applications and/or examinations? If so, please describe.

There are no statutory barriers or inefficiencies that hinder the processing of applications. The application process required in California is fairly consistent across the United States, including completing educational programs accredited by the Accreditation Council on Occupational Therapy Education and passage of the examinations administered by NBCOT.

School approvals

25. Describe legal requirements regarding school approval. Who approves your schools? What role does BPPE have in approving schools? How does the board work with BPPE in the school approval process?

The Accreditation Council on Occupational Therapy Education approves all occupational therapy educational programs; the Board does not work directly with BPPVE.

26. How many schools are approved by the board? How often are schools reviewed?

Not applicable.

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27. What are the board's legal requirements regarding approval of international schools?

Not applicable; the Board doesn't approve schools or educational programs.

Continuing Education/Competency Requirements

28. Describe the board's continuing education/competency requirements, if any. Describe any changes made by the board since the last review.

Occupational therapy practitioners are required to complete 24 Professional Development Units (PDUs) to demonstrate competency to renew their license with an active status. The PDUs must be taken in the two year period preceding the biennial renewal of the license.

Originally, CCR Section 4161(a)(1) defined professional development activities as fifty (50) minutes of participation equaled one (1) PDU. In September 2009, CCR Section 4161(a)(1) was amended so that One (1) hour of participation in a professional development activity equaled one (1) PDU.

Previously, when licensees renewed annually, completion of 12 PDUs were required in order to renew the license.

a. How does the board verify CE or other competency requirements?

Occupational therapy licensees are required to self-certify, under penalty of perjury, on the renewal application that they have completed 24 PDUs as a condition of renewing their license with active status.

b. Does the board conduct CE audits on its licensees? Describe the board's policy on CE audits.

The Board randomly audits licensees to determine compliance with the PDU requirement. The Board has established a goal of conducting audits on 5% of its active renewals.

c. What are consequences for failing a CE audit?

A citation and fine is issued to licensees who fail PDU audits. Incorporated within the citation is an Order of Abatement that requires the licensee to immediately complete the deficiency that exists. Licensees that fail to comply with the Order of Abatement will be referred to the Office of the Attorney General for formal disciplinary action.

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d. How many CE audits were conducted in the past four fiscal years? How many fails?

To date, 875 audits have been conducted. Of those 875 audits, 68 were referred to the Board's Enforcement Unit for non-compliance; 44 cases ultimately resulted in issuance of a citation.

Fiscal Year	Audits Completed	Audits Failed	% Audits Failed
2008/09	0	0	0
2009/10	234	16	6.8%
2010/11	307	20	6.5%
2011/12	336	25	7.4%
TOTALS / AVERAGE %	**877**	**61**	**6.97**

e. What is the board's course approval policy?

The Board does not approve professional development courses or the companies/ providers that offer the courses. However, CCR Section 4161states that activities acceptable to the Board include, but are not limited to, programs or activities sponsored by the American Occupational Therapy Association (AOTA) or the Occupational Therapy Association of California, post-professional coursework completed through any approved or accredited educational institution that is not part of a course of study leading to an academic degree.

In addition to the above, the Board also accepts coursework, programs, and activities that meet the following criteria:

- The program or activity contributes directly to the professional knowledge, skill, and ability.
- The program or activity relates directly to the practice of occupational therapy.
- The program or activity must be objectively measurable in terms of the hours involved.
- The licensee must receive a transcript, certificate of completion, or other documentary evidence establishing completion of the program, course or activity.

In order to broaden the ability of licensees to meet the PDU requirement, the board established a variety of alternative no cost or low cost ways, other than completing courses, for licensees to meet the requirement.

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For example, licensees can participate in structured special interest or study groups; mentor a practitioner or structured mentoring with an individual skilled in a particular area; supervising a student completing their Level II fieldwork ; publication of an article in a peer-reviewed or non-peer reviewed publication; publication of chapter(s) in occupational therapy or related professional textbook; attending a Board meeting, etc.

Thus, licensees are able to complete the PDU requirement by enrolling in continuing education coursework through a variety of on-line providers, in-service training provided by employers and facilities, or other alternative methods.

f. Who approves CE providers? Who approves CE courses? If the board approves them, what is the board application review process?

The Board does not approve CE courses or providers. Nor does it use a private vendor or other entity other than the American Occupational Therapy Association or Occupational Therapy Association of California as indicated above.

g. How many applications for CE providers and CE courses were received? How many were approved?

Not applicable, no data to report.

h. Does the board audit CE providers? If so, describe the board's policy and process.

The Board does not audit PDU providers.

i. Describe the board's effort, if any, to review its CE policy for purpose of moving toward performance based assessments of the licensees' continuing competence.

There is no evidence-based research that supports the concept that completion of continuing education leads to continued or improved competence. Due to the lack of evidence-based research and on-going funding issues, at this time, the Board is not planning to move forward with performance based assessments of licensees.

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Section 5 – Enforcement Program

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

There are several categories where the Board has identified target goals for in certain areas. (Quarterly performance measurements for the period July 1, 2010, through June 30, 2012, are included as attachments in Section 12.A.)

The Board is meeting most of its performance measurements. However, when comparing timeframes for certain categories, improvement can be noted. For example, the Intake and Investigation target is 270 days. During the quarter July through September 2010, the average time was 297 days. However, the average number of days dropped to 74 by the quarter April through June 2012 – a significant improvement in processing times.

Board staff continues to not only strive to meet the performance measurement targets, but also to address complaints, from complaint receipt to resolution (citation or formal discipline), as timely as possible in deference to both the complainants and the licensees.

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

From the historical complaint data below, it's evident there was a sharp increase in the number of complaints received each year as more people (consumers, governmental agencies, and the profession) became aware of the Board's existence and its role and function in regulating the profession.

However, if you compare the historical complaint data, which shows a sharp increase each year, to the complaint data in Table 9a, which has data for the last three fiscal years, it's apparent the number of complaints has leveled off a bit. Board staff attribute the sharp increase in the early years to the 'growth' expected for a new Board.

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Historical complaint data						
	2003/04	2004/05	2005/06	006/07	2007/08	2008/09
Complaints Received	115	138	220	442	427	485
Complaints Closed	89	109	164	303	398	417
Complaints Pending	44	73	129	268	297	365
Referred to DOI	6	8	12	11	6	13
SOIs filed	5	4	1	2	4	4
Accusations filed	2	4	1	8	4	12
Disciplinary Action	6	13	3	7	11	16

Table 9a. Enforcement Statistics			
	FY 2009/10	FY 2010/11	FY 2011/12
COMPLAINT			
Intake			
Received	306	683	543
Closed without Investigation	6	0	0
Referred to INV	306	683	541
Average Days to Close or Assign	25	1	3
Pending (close of FY)	0	0	2
Source of Complaint			
Public	21	45	23
Licensee/Professional Groups	3	1	0
Governmental Agencies	71	65	81
Other	211	572	439
Conviction / Arrest			
CONV Received	128	95	100
CONV Closed	128	95	99
Average Time to Close	4	1	1
CONV Pending (close of FY)	0	0	1

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LICENSE DENIAL			
	FY 2009/10	FY 2010/11	FY 2011/12
License Applications Denied	5	6	2
SOIs Filed	7	2	3
SOIs Withdrawn	0	0	0
SOIs Dismissed	0	0	0
SOIs Declined	0	0	0
Average Days SOI	282	638	351
Pending (close of FY)	2	3	2
ACCUSATION			
Accusations Filed	13	12	3
Accusation(s) and Petition(s) to Revoke Filed	1	1	1
Petition(s) to Revoke Filed	3	6	3
Accusations Withdrawn	0	1	0
Accusations Dismissed	0	0	1
Accusations Declined	0	1	724
Average Days Accusations	960	762	724
Pending (close of FY)	12	15	6

Table 9b. Enforcement Statistics (continued)			
	FY 2009/10	FY 2010/11	FY 2011/12
DISCIPLINE			
Disciplinary Actions			
Proposed/Default Decisions	7	5	8
Stipulations	12	6	6
Average Days to Complete	746	740	637
AG Cases Initiated	16	18	11
AG Cases Pending (close of FY)	14	18	8
Disciplinary Outcomes			
Revocation	4	4	3
Voluntary Surrender	0	0	0
Suspension	0	0	0
Probation with Suspension	02	0	1
Probation	8	6	11
Probationary License Issued	6	1	3
Other	4	2	3

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PROBATION			
	FY 2009/10	FY 2010/11	FY 2011/12
New Probationers	17	7	15
Probations Successfully Completed	2	5	4
Probationers (close of FY)	27	24	27
Petitions to Revoke Probation	4	7	4
Probations Revoked	0	2	1
Probations – voluntary license surrender	1	4	5
Probations Modified	0	0	0
Probation Periods Extended	0	0	1
Probationers Subject to Drug Testing	11	16	15
Drug Tests Ordered	114	613	757
Positive Drug Tests	21	240	63
Cease Practice Orders Issued (BPC 315.2)	0	0	6
Petition for Reinstatement Granted	1	0	0
DIVERSION Program – *Not Applicable*			

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

An increase in complaints has led to an increase in disciplinary action, as illustrated below.

Table 9c. Enforcement Statistics (continued)			
	FY 2009/10	FY 2010/11	FY 2011/12
INVESTIGATION			
All Investigations			
First Assigned	306	683	566
Closed	428	736	84
Average days to close	250	140	125
Pending (close of FY)	202	149	125
Desk Investigations			
Closed	403	726	517
Average days to close	212	131	65
Pending (close of FY)	191	129	109

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	FY 2009/10	FY 2010/11	FY 2011/12
Non-Sworn Investigations	N/A		
Sworn Investigation			
Closed	25	10	49
Average days to close	861	779	284
Pending (close of FY)	11	20	16
COMPLIANCE ACTION			
ISO & TRO Issued	0	0	2
PC 23 Orders Requested	1	0	0
Cease Practice Orders	0	0	6
Public Letter of Reprimand	1	0	0
Cease & Desist/Warning	1	0	0
Compel Examination	1	1	0
CITATION AND FINE			
Citations Issued	65	263	173
Average Days to Complete	291	88	98
Amount of Fines Assessed	$17,301	$50,492	$31,025
Citations Reduced	4	10	1
Citations Withdrawn	1	8	9
Citations Dismissed	0	10	10
Amount Collected	$17,025	$39,549	$20,655
CRIMINAL ACTION			
Referred for Criminal Prosecution	0	0	0

Table 10. Enforcement Aging

	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	Cases Closed	Average %
Attorney General Cases (Average %)						
Closed Within:						
1 Year	2	9	12	13	36	58.0
2 Years	3	7	5	9	24	38.7
3 Years	0	0	0	2	2	3.2
4 Years	0	0	0	0	0	0
Over 4 Years	0	0	0	0	0	0
Total Cases Closed	**5**	**16**	**17**	**24**	**62**	

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	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12	Cases Closed	Average %
Investigations (Average %)						
Closed Within:						
90 Days	215	180	536	387	1,318	63.7
180 Days	42	62	44	133	281	13.6
1 Year	43	88	58	33	222	10.7
2 Years	36	61	62	8	167	8.1
3 Years	1	18	19	2	40	1.9
Over 3 Years	2	19	17	3	41	1.9
Total Cases Closed	**339**	**412**	**717**	**566**	**2,069**	

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

The Department's *Complaint Prioritization Guidelines* was provided to the Board for consideration at their December 3, 2009, meeting. While the Board agreed with the majority of the guidelines, some changes were made prior to its adoption. The Board's *Complaint Prioritization Guidelines* are included as Attachment 12.E.

33. Are there mandatory reporting requirements? For example, requiring local officials or organizations, or other professionals to report violations, or for civil courts to report actions ta1ken against a licensee. Are there problems with receiving the required reports? If so, what could be done to correct the problems?

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

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

BPC 803.5 requires clerk of the court in notify the Board of any filings against a licensee charging a felony. BPC 803.5 also requires the clerk of the court to notify the

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Board, within 48 hours after the conviction, when one of its licensee is convicted of a crime shall.

While the Board has never received any reports as required by the BPC, the Board relies on subsequent arrest and subsequent conviction notification from the Department of Justice.

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

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

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

Unlicensed practice continues in California. This includes practice on an expired license and practice without a license. The Board has provided information regarding the importance of verifying licenses on-line prior to allowing someone to provide services, however, many employers are not diligent in routinely verifying licenses.

Due to how common it is for practice to occur without a license or on an expired license, the Board has amended the cite and fine regulations to specifically reference the various periods of "unlicensed" practice and the class of violation the practice fails into. (The class is relevant to the fine assessed.) Those periods of practicing without a license or practicing on an expired license for a period of *greater than a year* will not be issued a citation; instead the violation(s) will be included in a statement of issues (in a case involving an unlicensed individual) or in an accusation (in a case involving a licensee).

In response to the on-going issue with unlicensed practice or practice on an expired license, regulations went into effect in April 2009, requiring the supervising occupational therapist to determine that the occupational therapy practitioner possesses a current license, certificate or permit to practice occupational therapy *prior* to allowing the person to provide occupational therapy services.

A reminder of this requirement will be going out to all occupational therapists in October 2012. The Board is hopeful that this reminder will make the supervising OT more aware

of their responsibility and ultimately, reduce and/or eliminate unlicensed practice or practice on an expired license.

Cite and Fine

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

Intent of Cite and Fine Authority

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

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

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

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

Changes since last Sunset Review

Since the last Sunset Review, the Board has revised the citation regulations to:

- Add a new classification specifically for address change reporting violations. Citations are issued to licensees who fail to comply with address change reporting requirements.

- Add section establishing record retention time frame. Citations are now retained for five years from the date of resolution except when issued for unlicensed practice, which will not be purged, but maintained as public record.

Increase of Citation Fine to $5,000

In 2007, the Board increased its maximum fines to the $5,000 statutory limit, and may be issued under specific circumstances that are more serious in nature and/or resulted in or had significant potential for patient harm, as required by CCR Section 4141(a). These specific circumstances include, but are not limited to:

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

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

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

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

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

A large number of citations and fines are issued for minor address change reporting violations or continuing education audit violations. Fines assessed for such violations typically range from $50 to $250, depending upon factors as specified in CCR Section 4141. Factors considered when determining a fine amount are the nature and severity

of the violation, evidence that the violation was willful, and extent to which the licensee has cooperated with the Board.

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

The Board does not have a Disciplinary Review Committee.

In the last four fiscal years (as of June 19, 2012), the Board held 63 informal conferences, and two appeals were scheduled for hearings under the administrative procedures act. The following table breaks this down by fiscal year.

Fiscal Year	2008/2009	2009/2010	2010/2011	2011/2012	Totals
Informal Conferences Held	1	5	31	26	63
Administrative Hearings Held	2	0	0	0	2

The table above indicates 63 informal conferences were held in the last four fiscal years; however, the Board received a total of 66 requests for informal conferences. Of the 66 requests, 36 of those cases were affirmed and ordered to pay the associated fine, 27 were withdrawn or dismissed by the Board; there were three pending appeal requests at the close of FY 2011/12.

Additionally, the table above indicates two administrative hearing were held in the last four fiscal years. However, the Board received a total of ten requests for administrative hearings. The two administrative hearings held in FY 2008/2009 were requested in the prior fiscal year. Of the ten hearing requests received, three of those licensees withdrew their administrative hearing request and instead paid the associated fine, six were withdrawn or dismissed by the Board, and one is currently pending (as of June 19, 2012).

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

The five most common violations for which the Board issues citations are as follows:

1. Address Change Reporting Requirement – Failure to report a change of mailing address within 30 days after the change.
2. Unlicensed Practice – Practicing with an expired license or with an inactive license.
3. Professional Development Units (PDU) Violations - Failure to complete the required PDUs within the renewal cycle, failure to take the courses, failure to submit appropriate proof of completion, or a false statement on renewal form signed under penalty of perjury that the PDU requirements were met.

4. Practice Issues - Related violations such as a single violation of documentation, supervision violations, and aiding & abetting of unlicensed activity or less egregious violations of the Practice Act.
5. Failed to Disclose – Failure to disclose any conviction on an application for licensure or an application for renewal of a license.

40. What is average fine pre and post appeal?

The average citation fine pre-appeal is $190.00. Citations issued in the last for FYs years have been issued with fines ranging between $50 (address change violation) and $5,725.00 (fraudulent billing=$5,000 and unprofessional conduct=$725). The final citation fine amount post-appeal averaged $175.00 over the last four fiscal years.

41. Describe the board's use of Franchise Tax Board intercepts to collect outstanding fines.

The Board utilizes the Franchise Tax Board's (FTB) Intercept Program to attempt collection of any outstanding fines. Under this program, tax returns or lottery winnings can be seized and sent to the Board as payment of monies owed. Respondents who fail to pay an uncontested fine are sent a series of Demand Letters when an account is delinquent. If a fine is not contested and full payment is not made within 30 days of the issuance of a fine, or if the respondent fails to contact the Board to make payment arrangements, the Board will send the first demand letter. The Board will send a second notice at 60 days delinquent. If no response is received from the first or second letters, a third and final notice will be sent, regular and certified mail, notifying the individual that his/her file will be sent to the FTB and that any tax refunds or lottery winnings will be intercepted and sent to the Board. The FTB will continue to intercept tax refunds and lottery winnings until payment in full has been made.

Cost Recovery and Restitution

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

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

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

43. How many and how much is ordered for revocations, surrenders and probationers? How much do you believe is uncollectable? Explain.

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

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

In FY 2008/2009 the discrepancy between cases that had potential for cost recovery being awarded versus the two cases that resulted in cost recovery being ordered, can be attributed to three revocations by default (no hearing) and four cases being finalized in FY 2009/2010. Conversely in FY 2011/2012 the Board filed three Accusations serving as the basis for potential cases for recovery, while eleven cases were finalized that contained orders for cost recovery.

Cases that resulted in revocation or surrender of licensure are virtually uncollectable since the respondent has lost his/her professional income source. However, in the event a respondent applies for, and is successful in reinstating his/her license, the Board may impose a cost recovery order as part of the terms and conditions of reinstatement. The Board has collected 100% of cost recovery ordered from licensees that were placed on probation who successfully completed probation.

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

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

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

The Board utilizes the Franchise Tax Board's Intercept Program to attempt collection of any outstanding cost recovery orders. Under this program, tax returns or lottery winnings can be seized and sent to the Board as payment of monies owed. Respondents who failed to pay the ordered cost recovery are sent Demand Letters when an account is 30 days delinquent. If payment in full is not made within 30 days or if the respondent fails to contact the Board to make payment arrangements, the Board will send a second notice at 60 days delinquent. If no response is received from the first or second letters, a third and final notice will be sent, regular and certified mail, notifying the individual that his/her file will be sent to FTB and that any tax refunds or lottery winnings will be intercepted and sent to the Board. The FTB will continue to intercept tax refunds and lottery winnings until payment in full has been made.

Table 11. Cost Recovery

	FY 2008/09	FY 2009/10	FY 2010/11	FY 2011/12
Total Enforcement Expenditures *	$207,048	$217,314	$183,528	$277,727
Potential Cases for Recovery **	9	13	12	3
Cases Recovery Ordered	2	11	7	11
Amount of Cost Recovery Ordered	$58,084.50	$25,203.25	$16,805.19	$32,510.00
Minimum cost recovery ordered	847.50	656.50	1,000.00	935.00
Maximum cost recovery ordered	57,210.00	5,000.00	4,263.19	12,000.00
Amount Collected	**$16,242.54**	**$13,345.02**	**$12,340.22**	**$21,295.28**

* Enforcement Expenditures includes expenses incurred by the Office of the Attorney General, Office of Administrative Hearing, Evidence/Witness Fees, Evidence fees, Court Reporter Services, and charges by the Division of the Investigative.

** Potential Cases for Recovery are those cases in which disciplinary action has been taken based on violation of the practice act. These totals include Accusations filed.

Please note: Table 12 was deleted as no restitution was ordered or collected in FYs 2008/09 – 2011/12.

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

There has been only one case in the Board's history where the Board has requested the administrative law judge to order the licensee to reimburse his employer nearly $14,000 for salary he fraudulently billed and did not earn. However, the licensee surrender his license and the order issued by the administrative law contained an order

to reimburse the Board it's costs but did not include the order of restitution to the licensee's former employer.

While the Board has had limited opportunities to request restitution, there are currently several pending cases involving funds owed a former employer or a public agency; in each case the Board will be seeking an order that each of the licensees make restitution as appropriate.

Section 6 –
Public Information Policies

47. How does the board use the internet to keep the public informed of board activities? Does the board post board meeting materials online? When are they posted? How long do they remain on the website? When are draft meeting minutes posted online? When does the board post final meeting minutes? How long do meeting minutes remain available online?

The Board provides information a variety of ways:

- Board and Committee meeting information, including agendas and meeting materials, and pending regulatory actions are all posted on the website,
- Board and Committee meeting agendas/notices and information regarding pending regulatory actions are sent to those on the interested parties lists via email, list-serve, and regular mail, and
- Information regarding upcoming meetings is posted on the 'wall' of the Board's facebook page.

As of now, Board meeting information (agenda, meeting materials, minutes, etc.) remains on the website indefinitely. Draft minutes are not made available to the public until they are sent to the Board members and posted on-line with the meeting materials. Once the meeting is held and the Board adopts the minutes, the final minutes are posted on the website within two weeks.

Information regarding pending regulatory actions is retained on the website until the language goes into effect; this is about 15 days longer than required by Government Code Section 11347.

48. Does the board webcast its meetings? What is the board's plan to webcast future board and committee meetings?

The Board has only webcast a few of its meetings, however, plans to take advantage of this service more often beginning in calendar year 2012.

49. Does the board establish an annual meeting calendar, and post it on the board's web site?

Each year at its last meeting of the year, the Board selects its meeting dates for the entire next calendar year. The annual meeting calendar, including the cities where the meeting will be held if not exact locations, is posted in December.

50. Is the board's complaint disclosure policy consistent with DCA's *Recommended Minimum Standards for Consumer Complaint Disclosure*? Does the board post accusations and disciplinary actions consistent with DCA's *Web Site Posting of Accusations and Disciplinary Actions* (May 21, 2010)?

Yes - more information available below.

51. What information does the board provide to the public regarding its licensees (i.e., education completed, awards, certificates, certification, specialty areas, disciplinary action, etc.)?

The information provided on the Board's website regarding licensees includes the following:

- The individual's name,
- Their license number,
- The license issuance and expiration dates,
- The license status,
- The county of their address of record (no address is provided), and
- Whether the licensee is approved by the Board to provide services in advanced practice areas.

If relevant, any disciplinary actions and all related legal documents are also posted. Citations are public information; however, currently they are not posted on the Board's website.

52. What methods are used by the board to provide consumer outreach and education?

The Board developed a consumer brochure (available October 2012) and is in the process of adding consumer-related web content and links. All outreach activities have been curtailed due to travel restrictions imposed last year.

Section 7 –
Online Practice Issues

53. **Discuss the prevalence of online practice and whether there are issues with unlicensed activity. How does the board regulate online practice? Does the board have any plans to regulate Internet business practices or believe there is a need to do so?**

Section 8 – Workforce Development and Job Creation

54. What actions has the board taken in terms of workforce development?

Due to budgetary constraints, the Board has not been able to focus efforts in this area.

55. Describe any assessment the board has conducted on the impact of licensing delays.

The Board has not conducted a formal assessment regarding any delays in licensing applicants. However, the Board is aware of and sensitive to this issue and strives to license all qualified individuals as soon as possible. Board statistics reflect that the three year average processing time for a compete applications is 22 days.

Unfortunately, the Board has a small number of cases that fall outside the normal processing time parameters. Most often, the timing of these cases can be attributed to issues surrounding the fingerprint background check, an applicant's inability to secure an official transcript, failing to pass the examination for licensure, and/or investigation of a criminal history.

56. Describe the board's efforts to work with schools to inform potential licensees of the licensing requirements and licensing process.

The Board has coordinated and conducted overview sessions to graduating students at various California occupational therapy educational programs. The purpose and design of the overview session is to orient students with the processes and requirements for licensure, and describe and inform students of the Board's role and responsibility of protecting the public. The Board has annually provided a workshop on the licensing process designed for students and practitioners re-entering the profession at the annual conference of the Occupational Therapy Association of California. However, these activities have been curtailed due to travel restrictions imposed last year.

a. Provide any workforce development data collected by the board, such as workforce shortages or successful training programs.

The Board does not have data regarding these matters.

Section 9 – Current Issues

57. What is the status of the board's implementation of the Uniform Standards for Substance Abusing Licensees?

The Board was the first healthcare Board to implement the Uniform Standards. The Board's Disciplinary Guidelines were amended to add the Uniform Standards and took effect July 26, 2011. Also, consistent with BPC 315.2, the Board issued six Cease Practice Orders (CPOs) to five licensees on probation for substance abuse issues; this occurred during the period September 2011 – May 8, 2012. The CPO is issued to the probationer, however, their employer is also notified the same day.

(Samples provided as attachments in Section 12.F.)

In order to provide transparency and increased public protection, the CPO information is available to the public. To assist prospective employers or consumers, the CPO information is available on the Board's website should someone go on-line to verify the license of an individual. (This information is not available on the disciplinary actions page; information regarding CPOs is only available on an individual's licensing record.)

58. What is the status of the board's implementation of the Consumer Protection Enforcement Initiative (CPEI) regulations?

The Board's CPEI regulations were amended and went into effect September 28, 2012.

59. Describe how the board is participating in development of BreEZe and any other secondary IT issues affecting the board.

The Board is participating in the development of BreEZe and dedicated one+ staff (depending on development issue being worked at the time) to liaison with the programmers during the various development phases. The Board is currently included in Release 2, which is scheduled for mid-Summer of 2013.

Section 10 –
Board Action and Response to Prior Sunset Issues

Include the following:

1. **Background information and short discussion of recommendations made by the Committee/Joint Committee during prior sunset review, what action the Board took in response to the recommendations under the prior Sunset review.**

Issue 1 – *Continued regulation of the Profession and extension of the Board's operations.*

The Board's sunset date was extended to 2014.

Issue 2 – *Allowing out-of-state licensees to practice while applications are pending.*

An applicant who possesses a current, active, and non-restricted license to practice occupational therapy under the laws of another state that the board determines has licensure requirements at least as stringent as the requirements of this chapter, may practice for up to 60 days during the period the application is being processed.

Issues 3 and 4 – *Is the Board addressing its budget surplus and should the license renewal period change from annual to biennial.*

The Board changed the license renewal period from annual to biennial. This helped address the Board's on-going revenue level and provided the licensing population greater flexibility in with its continuing education requirements.

2. **Any recommendations the board has for dealing with the issue, if appropriate.**

All issues identified in the prior Sunset report have been addressed; there are no outstanding issues requiring attention.

Section 11 – New Issues

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

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

There are no outstanding issues identified in the last Sunset report, that haven't been addressed.

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

New Issue 1 – *Occupational therapy corporations are not mentioned in the Moscone Know Act (the Corporations Code.)*

The Board wants to add occupational therapy corporations to the Moscone Knox Act (Corporations Code Section 13401.5) and specify which healing arts licensees may be shareholders, officers, directors, or professional employees of occupational therapy corporations, subject to certain limitations.

Occupational therapists and occupational therapy assistants in California currently own occupational therapy corporations and employ occupational therapy practitioners as well physical therapists, speech therapists, and other licensed healthcare staff. These corporations provide comprehensive services to various populations that they serve.

Currently these companies are located throughout the state and are large employers of many different licensed healthcare practitioners. If occupational therapy corporations are not listed in the Corporations Code, those professional corporations cannot legally be employers of healthcare practitioners. Those corporations would be violating the Corporations Code and those consumers utilizing those companies for services could potentially lose access to the care they receive.

New Issue 2 – *Occupational therapists and occupational therapy assistants are not mentioned in the Moscone Knox Act.*

The Board wants to add occupational therapists and occupational therapy assistants to the Moscone Knox Act, to the listed employees, shareholders, directors, etc., of specified professional healthcare corporations. By not listing occupational therapists and occupational therapy assistants to those list(s) of specified employees, directors, or

shareholders of professional corporations, it restricts corporations from hiring occupational therapists or occupational therapy assistants to provide their unique services. This lack of specificity thereby restricts access to occupational therapy services in California.

New Issue 3 – *When the Board was first established, there was national minimum education standards required by all occupational therapy education programs relating to the areas of swallowing, assessment, evaluation, or intervention, the use of physical agent modalities, or hand therapy. Thus, these practice areas were identified as 'advanced practice' since the practice areas were considered beyond the skills of a new graduate, and additional requirements were established. In order to provide services in any of these areas, an occupational therapist must first complete additional specified post-professional education and training to demonstrate competence to the Board.*

Now that all entry-level occupational therapy degree programs across the nation are required to include minimum educational standards in the occupational therapy curriculum to include education in the areas of swallowing, Swallowing Assessment, Evaluation, or Intervention, the use of physical agent modalities, and sufficient, all new graduates will acquire education in these areas. Therefore, after a certain date (date to be determined), new graduates should not have to meet the advanced practice requirements or demonstrate competence to the Board before providing services in these areas.

Previously, stakeholders testified that they felt these areas of practice would be high risk with potential for harm. Since the Board was enacted, enforcement cases do not support these concerns nor confirm that risk of harm is high. California is the *only* state that requires post-professional education or training in the areas of hand therapy or swallowing; with respect to the use of physical agent modalities, very few other states have additional training requirements, beyond the qualifying educational degree program.

Continuing to require occupational therapists to demonstrate competence makes it more restrictive for licensing of occupational therapists in California; these requirements are more burdensome and restrictive to occupational therapists for a potential 'harm' that has not been proven.

Thus, the Board wants to eliminate the statutory requirement that occupational therapists must meet specified post-professional education and supervised training requirements before providing services in the areas hand therapy, swallowing assessment, evaluation, or intervention, or the use of physical agent modalities.

By eliminating the requirement that occupational therapists' demonstrate competence by meeting certain post-professional requirements, an unnecessary burden for licensed occupational therapists is eliminated.

New Issue 4 –*The current definition of "Practice of Occupational Therapy means..." is not a completely accurate reflection of what occupational therapists actually do.*

Thus, the Board recommends the current definition, which is limited to hands-on, treating clinicians, be amended to a more broad reference, such as "Occupational Therapy means..." and addresses the variety of roles a licensee may undertake in the ever-evolving field of occupational therapy.

Moreover, the current ACOTE standards require that all educational program faculty maintain a current license in their state of employment. Defining the population of practitioners to include faculty, researchers, clinical instructors, fieldwork instructors, consultants, etc., better defines the practitioner and the consumers when therapy services are being provided. In addition, since the ACOTE standards are requirements of a voluntary, non-governmental entity, when deficiencies are identified (such as faculty not possessing a license), there is no action taken by ACOTE nor is the educational institution issued a reprimand; ACOTE only issues a 'deficiency' to educational program and the program has several years to correct the deficiency. Thus, with regards to understanding the clear lines of what is considered 'practice' by occupational therapists and ensuring consumer protection, the definition of practice must be amended.

New Issue 5 –*The majority of the Board's complaints involve issues surrounding unethical conduct, including practicing without a license, practicing on an expired license, fraudulent billing, misrepresentation*

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

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

3. New issues not previously discussed in this report.

N/A

4. New issues raised by the Committee.

None reported as of yet.

Section 12 – Attachments

Please provide the following attachments:

A. Quarterly and annual performance measure report as published on the DCA website.

B. Board's Administrative Manual.

C. Board Member Disciplinary Resource Manual.

D. Current organizational chart showing relationship of Committees to the Board, and Roles and Responsibilities for each Committee.

E. Complaint Prioritization Guidelines.

F. Sample Cease Practice Order (CPO) sent to licensees; sample employer notification of CPO issued to licensee.

G. Year-end organization charts for last four fiscal years.