

AGENDA ITEM 7

**DISCUSSION OF POLICY ISSUES TO BE INCLUDED IN THE
SUNSET REVIEW REPORT.**

Section 10 – Board Action and Response to Prior Sunset Issues

Include the following:

1. Background information concerning the issue as it pertains to the board.
2. Short discussion of recommendations made by the Committees during prior sunset review.
3. What action the board took in response to the recommendation or findings made under prior sunset review.
4. Any recommendations the board has for dealing with the issue, if appropriate.

Section 11 – New Issues

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

1. Issues that were raised under prior Sunset Review that have not been addressed.
2. New issues that are identified by the board in this report.
3. New issues not previously discussed in this report.
4. New issues raised by the Committees.

Section 12 – Attachments

Please provide the following attachments:

- A. Board's administrative manual.
- B. Current organizational chart showing relationship of committees to the board and membership of each committee (cf., Section 1, Question 1).
- C. Major studies, if any (cf., Section 1, Question 4).
- D. Year-end organization charts for last four fiscal years. Each chart should include number of staff by classifications assigned to each major program area (licensing, enforcement, administration, etc.) (cf., Section 3, Question 15).



August 15, 2016

Heather Martin, Executive Officer
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2250
Sacramento, CA 95815

RE: 2017 Sunset Review: Recommended Updates to Occupational Therapy Practice Act

Dear Ms. Martin,

I am writing on behalf of the Occupational Therapy Association of California (OTAC) to express our recommended amendments to the Occupational Therapy Practice Act, which will clarify provisions related to advance practices, as well as the provision of mental health services by occupational therapy practitioners.

OTAC is a not-for-profit professional society representing the interests of all 18,694 licensed occupational therapy clinicians throughout California. Occupational therapists (OTs) and occupational therapy assistants (OTAs) work with people of all ages experiencing physical and behavioral health conditions or disabilities to develop, improve, or restore functional daily living skills, such as caring for oneself, managing a home, achieving independence in the community, driving, or returning to work.

In previous discussions with the California Board of Occupational Therapy (CBOT), OTAC has asked the CBOT Ad Hoc Committee and the board to consider regulations that are consistent with either of the following two concepts concerning an OT's role in providing mental health services:

Concept One:

Occupational therapy emphasizes the provision of support and services that enable a person to carry out their everyday life activities so that they can be productive, independent, engaged and safe within their environment. Through engagement in everyday activities, occupational therapy practitioners promote mental health and support functioning in people with or at risk of experiencing a range of mental health disorders, including psychiatric, behavioral and substance abuse.

Concept Two:

Through engagement in everyday activities, occupational therapy practitioners promote mental health and support functioning in people with or at risk of experiencing a range of mental health disorders, including psychiatric, behavioral, and substance abuse.

In conversations with the Board, we determined that CBOT likely does not have the regulatory authority to make these recommended changes, because existing statute limits the Board's authority to amend regulations affecting scope of practice. Therefore, OTAC is formally recommending that California Business and Professions Code Section 2570.20 be amended to address the authority of the Board via the Legislature's Sunset Review of CBOT in 2017. This amendment would contain language very similar to

provisions governing the authority of the Physical Therapy Board of California (B&P Code Sec. 2615), which states, **“The board shall adopt those regulations as may be necessary to effectuate this chapter. In adopting regulations, the board shall comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.”**

Accordingly, OTAC’s suggested amendments to B&P Code Sec. 2570.20 granting authority to CBOT would read as follows:

(a) The board shall administer, coordinate, and enforce the provisions of this chapter, and evaluate the qualifications, ~~and approve the examinations~~ for licensure under this chapter.

(b) The board shall adopt rules in accordance with the Administrative Procedure Act ~~relating necessary to professional conduct to carry effectuate~~ the purpose of this chapter, ~~including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice~~ for persons holding a license to practice occupational therapy or to assist in the practice of occupational therapy in this state.

(c) Proceedings under this chapter shall be conducted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

In addition to the amendments referenced above, OTAC formally requests that the Board consider changes to provisions relating to occupational therapy advanced practices via the 2017 CBOT Sunset Review process. We believe that the advanced practices provisions in existing statute are unnecessary and should be repealed. However, we recognize that a total repeal might not be possible immediately, so we would like to propose the following options for the Board to consider:

1. Repeal the advanced practice requirements for hand therapy, use of physical agent modalities and swallowing assessment, evaluation or intervention.
2. Maintain the advanced practice requirements, but allow entry-level education and experience to count towards the advance practice requirements.
3. Maintain the advanced practice requirements, but repeal the requirement that the therapist demonstrate to the Board that they have met the requirements and replace the provision with an attestation requirement.
4. Maintain the advanced practice requirements, allow entry-level education and experience to count towards the advance practice requirements (as in option 2) and repeal the requirement that the therapist demonstrate that they have met the requirements and replace the provision with an attestation requirement (as in option 3).
5. In combination with options 2, 3 or 4, eliminate the approval process for advance practice providers.

As you know, OTs are among the range of qualified providers who provide therapy services to individuals with physical conditions and mental illnesses to help them carry out necessary tasks. OTAC believes the statutory changes outlined above will ensure OTs are able to practice to the full extent of their education and training, which is especially critical as the state works to increase access to mental health care for those in need.

If you have any questions, please contact Ivan Altamura with Capitol Advocacy at (916) 444-0400 or ialtamura@capitoladvocacy.com.

Sincerely,

A handwritten signature in cursive script, appearing to read "Heather J. Kitching".

Heather J. Kitching, OTD, OTR/L
OTAC President

cc: Members, California Board of Occupational Therapy

AGENDA ITEM 8

UPDATE AND TAKE ACTION, IF NECESSARY, ON PENDING RULEMAKING FILES.

The Regulations Update report is attached for review.

REGULATIONS UPDATE REPORT

Pending Rulemaking files: In-Process

Rulemaking File Subject	Section(s)	Status	Close of public comment period	Date Pkg Sent to DCA	Date Pkg Rtn'd from DCA	Final Pkg Due to OAL	Actual Submit Date To OAL	Date language goes into/ went into effect
Application	4110	Language published July 31, 2015; edits to application needed. Addendum to ISR and Revised Application noticed December 17, 2015. Modified text adopted at January 2016 meeting.	09/15/2015 01/04/2016	02/16/2016	06/30/2016	07/30/2016	07/06/2016	
Standards of Practice for Telehealth	4172	Language published September 25, 2015. Modified text noticed December 2, 2015. Modified text adopted at January 2016 meeting.	11/09/2015 12/18/2015	05/16/2016		09/24/2016		
Fees	4130	Language published April 25, 2016. Modified text noticed July 6, 2016. Addendum to ISR and documents added to the file noticed August 3, 2016	05/09/2016 07/22/2016 08/18/2016			03/24/2017		
Continuing Competence	4161 4162 4163	Language published June 24, 2016.	08/08/2016			06/23/2017		
Notice to Consumer	4176	Language published July 1, 2016	08/15/2016			06/30/2017		
Petition for Reinstatement or Modification of Penalty	4149.5	Language to be published August 26, 2016	10/10/2016					

REGULATIONS UPDATE REPORT

Pending Regulatory Amendments: Process Not Yet Started

Rulemaking File Subject	Section	Priority	Status	Comments
Accept PT license for Hands/PAMs approval	4151 4152	1	Board approved language for noticing.	
Filing of Addresses	4102	2	Draft language to be presented to the Board.	
Language for OT to request to supervise more than 2 OTAs	tbd	tbd	Practice Committee to prepare language; draft language to be presented to the Board at Spring 2017 meeting.	Language would implement BPC 2570.3(j)(2).
Patient record retention requirements when a business is closed/sold/inherited or has a change of ownership; or if practitioner is no longer in private practice	tbd	tbd	Practice Committee to prepare language; draft language to be presented to the Board at Spring 2017 meeting.	Language provides specificity to language in BPC 2570.185.