



MEMORANDUM

DATE	March 23, 2017
TO	Board of Occupational Therapy and Ad Hoc Committee
FROM	Legal Affairs Division Department of Consumer Affairs
SUBJECT	Assembly Bill 1510 -- Athletic Trainers (Dababneh, 2017-2018)

Background

At the Board of Occupational Therapy’s (Board) March 9, 2017 meeting, the Board members discussed proposed legislation regarding the licensure and regulation of athletic trainers, Assembly Bill 1510 (AB 1510). This bill would enact the Athletic Training Practice Act and establish the Athletic Trainer Licensing Committee (Committee) within the Board. Per the Board’s request, I have compiled topics for discussion relating to the current draft of AB 1510 for the Ad Hoc Committee and Board to consider.

Please note that any issue noted as “missing” is not necessarily required. This list is intended to point out possible legal issues and deficiencies for the Board and Ad Hoc Committee’s consideration.

Issues to Consider (By Topic)

- 1. Committee:**
 - a. Powers and duties?** See OT Practice Act - B&P 2570.20.
 - b. Jurisdiction?** See OT Practice Act – B&P 2570.30.
- 2. Executive Officer:** The current draft of AB 1510 is silent regarding the Committee’s authority to hire an executive officer. Please note that Business & Professions Code, section 107 allows boards to appoint an executive officer pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.
 - a. See OT Practice Act: B&P 2570.21
- 3. Staff:** AB 1510 is silent regarding the Committee’s authority to hire other officers and employees. Business and Professions Code section 154 requires boards to receive approval of the appointing power for any and all matters relating to employment, tenure

or discipline of employees. Per Business and Professions Code section 23.6, the “appointing power” is the Director of the Department of Consumer Affairs, unless otherwise defined.

a. OT Practice Act: 2570.21

4. Regulations

a. Section 2697.3 authorizes the adoption of regulations, but fails to specify that they must be adopted pursuant to the Administrative Procedure Act; recommended addition.

5. Licensure

a. Application for licensure / requirement for license: unclear

- i. Missing: The applicant is in good standing (or similar – not disciplined in another state, for example), and has not committed acts or crimes constituting grounds for denial of a license under Section 480 of the B&P Code; recommended addition.
- ii. Missing: The applicant at the time of application is age 18 or over, not addicted to alcohol or any controlled substance.
- iii. See B&P 2570.6(a) and (f), OT Practice Act

b. Issuance of license on probation is not addressed.

c. Renewal

- i. Needs language regarding the renewal process. For example, see B&P 2570.10(a), which states that licenses shall be subject to renewal as prescribed by the Board. This concept incorporates timeliness, renewal application, etc.

d. Applicant not engaged in practice for 5 years not addressed.

e. Out-of-state applicants / reciprocity not addressed.

f. Exemptions to licensure

- i. Section 2697.10(c) provides an exemption to the licensure requirement, but requires “registration with the committee.” What is the registration?
- ii. Section 2697.13: other exemptions to licensure requirement.

g. Whether violation of the licensing requirement criminal act / misdemeanor not addressed.

- i. Consider adding to Section 2697.10.
- ii. See OT Practice Act: 2570.23

6. License Discipline

a. What are the grounds for discipline?

- i. Per Section 2697.9(b), limited to “unprofessional conduct.”

b. Suspension, revocation, or probation

- i. Per Section 2697.9(b), limited to “unprofessional conduct.”

c. Petitions for reinstatement or modification of penalty not addressed.

d. Administrative hearings:

- i. Section 2697.9(b) references discipline “after a hearing” but fails to specify that the hearing must be pursuant to the Administrative Procedure Act; recommended addition.

e. Must discipline and/or licensee information be posted online?

- i. See Business and Professions Code section 27, which requires certain specified entities to provide on the internet information regarding the status of every license issued by that entity. Consider requesting the Commission be added to this statute.

7. Fees: missing

- a. Fingerprinting fee
- b. Initial license fee
- c. Other?

8. Definitions:

- a. Requirement in Sections 2697.1(a) and 2697.12(a) that the licensee practice “under the direction of a licensed physician and surgeon” is unclear. Must this be in writing? What are the requirements?
- b. Section 2697.12(a): The direction from the physician/surgeon shall be provided by “verbal” or written order. “Verbal” orders are difficult to enforce.
- c. Section 2697.12(b): “The committee may establish other alternative mechanisms for the adequate direction of an athletic trainer.” Vague.
- d. How do you know if someone is violating the licensure requirement? What does practicing without a license look like?
- e. Does this license regulate personal fitness trainers? Does this need to be clarified?
- f. Are other definitions or clarifications to existing definitions needed?

9. Scope of Practice: Sections 2697.11, 2697.12

- a. Board members expressed concern regarding lack of clarity.

10. Athletic Trainers’ Fund: Recommend re-phrasing. No mention of using funds for Committee’s expenses and otherwise administer chapter. See OT Practice Act - B&P 2570.22.

11. Recommend adding the Commission to Business and Professions Code sections:

- a. 101, Composition of the Department of Consumer Affairs;
- b. 144, Fingerprinting (adding to § 144 makes § 144.5 applicable to the Commission, which is the goal here)

DOREATHEA JOHNSON
Deputy Director, Legal Affairs

/signature on file/

By ILEANA BUTU
Attorney

cc: Heather Martin, Executive Officer, Board of Occupational Therapy