

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Joint Oversight Hearing, March 6, 2017

Assembly Committee on Business and Professions and
Senate Committee on Business, Professions and Economic Development

Responses to Legislative Staff Recommendations

BUDGET ISSUES

ISSUE #1: Will the CBOT's proposed fee structure support the health of its long-term fund condition?

Background: As stated above, the CBOT's new budget authority significantly increases its long-standing and intentional budget imbalance. Its recent fund condition projections indicate an insufficient fund reserve before the end of FY 2018/19. In response, the CBOT has established several new fees for services it provides.

In addition, it has proposed regulations to increase biennial renewal fees (its main source of revenue) and other licensing and service fees to meet its new budget authority and potential expenditure needs. The initial license, renewal, and inactive renewal fees will at first increase to \$220, then to \$270 in 2021. The pending fee increases are as follows:

| Proposed Regulatory Fee Increases | | |
|-----------------------------------|---------|----------|
| | Current | Proposed |
| OT Initial License | \$150 | \$220 |
| OT Biennial Renewal | \$150 | \$220 |
| OT Inactive Renewal | \$25 | \$220 |
| OT Initial License in 2021 | - | \$270 |
| OT Biennial Renewal in 2021 | - | \$270 |
| OT Inactive Renewal in 2021 | - | \$270 |
| OTA Initial License | \$150 | \$180 |
| OTA Biennial Renewal | \$150 | \$180 |
| OTA Inactive Renewal | \$25 | \$180 |
| OTA Initial License in 2021 | - | \$210 |
| OTA Biennial Renewal in 2021 | - | \$210 |
| OTA Inactive Renewal in 2021 | - | \$210 |
| Delinquent Renewal | \$75 | \$100 |
| Limited Permit | \$75 | \$100 |
| Duplicate License | \$15 | \$25 |

The CBOT also issues a retired license, which is like an inactive license except for the following: (1) the CBOT's regulations limit a licensee to two applications for a retired license; (2) retired licensees are statutorily exempt from renewal requirements; (3) retired licensees are permitted to

use the title of OT as long as it contains the term “retired”; and (4) the “retired” license fee is set in statute at \$25. Therefore, the CBOT has not proposed increasing the fees for this category.

Staff Recommendation: *The CBOT should discuss its fund projections and fee audits with the Committee and explain whether the new fee structure will generate sufficient revenues to cover its costs. Further, the CBOT should inform the Committee of whether a statutory change is needed to charge a lesser fee for the inactive license.*

Board Response:

The Board identified that revenues received annually were less than the Board's annual expenditures, which led to an on-going reduction to the Board's fund. This resulted in a reduction to the number of months of operating reserves in the Board's fund. Thus, the proposed regulatory fee increases Noticed in March 2016 are in amounts that will ensure revenue sufficient to support Board operating expenses and ensure the Board's long-term financial stability.

The Board's primary revenue source is the biennial license renewals. The Board considered several different fee increase scenarios and analyzed the impact to the Board's fund conditions before deciding on the tiered biennial renewal fees increase. Projecting that the Board's expenditures remained constant and the biennial license renewal fees were increased only once, the Board projected a negative fund balance by FY 2021-22. With the tiered biennial renewal fee increases, the Board has projected a positive fund balance and will have sufficient revenue even if the Board's expenditure increases. Thus, the proposed renewal fee increases are projected to ensure the Board's fund maintains a four-month reserve through FY 2026-27, or possibly later.

Amending the inactive biennial renewal fee to be the same amount charged for the active biennial renewal fee is consistent with BPC section 462. Charging the same biennial renewal fee for active and inactive renewals is also consistent with most other healthcare boards. The California Board of Behavioral Sciences and California Board of Psychology are the only other boards that have a lower renewal fee for inactive renewals.

The Board did not consider a statutory change to charge a lesser fee for inactive renewals when the Board submitted legislative proposals for the Committee to consider as part of its Sunset Review. The fee increases proposed, including increasing the inactive renewal fee to be the same as the active renewal fee, will ensure the Board's fund will remain solvent through FY 2026-27 and possibly thereafter. If the inactive renewal fee was raised to an amount less than was noticed, there would be a negative impact to the Board's fund, and possibly necessitate increases to other fees. The Board's motive behind the proposed fee increases as noticed was to provide for long-term financial stability of the Board's fund.

ADMINISTRATIVE ISSUES

ISSUE #2: Does the CBOT use its administrative committee to address any ongoing issues?

Background: The CBOT has reported that it previously struggled with staffing and workload issues. One approach that boards take when dealing with administrative and operational issues is

to establish a committee to investigate potential problems, work with staff, and make recommendations to the full board. Committees are more flexible, can meet more often, and can parse out details the full board may not have time to explore.

A committee can also be useful for boards that suffer from information bottlenecks, which can result in a lack of innovation or structural issues that remain unresolved. While daily administration is usually delegated to the EO, a committee can provide board members access to other staff and receive additional input and suggestions.

On the other hand, smaller boards that meet frequently may not benefit as much from committees. Requiring committee recommendations before the full board takes action could hinder efficiency when the board is well informed. Further, boards may have other ways to address these issues, negating the need for committees.

Staff Recommendation: *The CBOT should discuss how it uses its administrative committee to explore ongoing issues and whether it uses any other methods to improve board processes and promote the flow of information to and from the board members.*

Board Response:

Consistent with the Bagley-Keene Open Meeting Act (Act), board members are prohibited from discussing, deliberating, or taking action on any item of business unless in a properly noticed meeting. For this reason, the administrative committee does promote the flow of information to and from the board members. The flow of information to and from Board members occurs during the Board meetings. Moreover, identifying process improvements falls within the purview of the Executive Officer.

LICENSING ISSUES

ISSUE #3: *Should the CBOT take additional steps to require licensees to attestation in its application or utilize an educational tool, whether continuing competence courses or an online assessment, to assist with its practice issues?*

Background: The CBOT reports that it spends approximately 63.1% of its budget on enforcement. During the CBOT's last review in 2012, the CBOT reported that most the complaints received 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.

The CBOT's latest report indicates that this is still the case. The CBOT has since tried to address this issue by performing outreach to employers, educational programs, and consumers regarding the importance of verifying licenses online prior to allowing someone to provide services. The CBOT notes, however, that many employers are still not diligent in routinely verifying licenses of employees.

In 2013, the committee staff was concerned about the high number of complaints relating to practice issues. Therefore, staff recommended that the CBOT "outline a plan to include a jurisprudence or ethics course as a required continuing education course for its licensees." The CBOT's response to this issue as stated in its 2016 *Sunset Review Report* is as follows:

Rather than develop a state jurisprudence examination, the Board suggests an alternative: Require all applicants for licensure and renewing licensees to provide an ‘attestation’ on the application. This attestation would reflect the licensee they have read the laws and regulations relating to occupational therapy practice in California. Since a recent report issued by the Little Hoover Commission highlighted the importance of establishing defensible licensing requirements, the Board is awaiting further information from the DCA’s Office of Professional Examination Services on the costs of an occupational analysis and examination audit.

Since the current application does not have an attestation, including one that may help incentivize applicants to become familiar with the laws and regulations. However, it may not help applicants and licensees who forget or do not fully understand the requirements.

As noted by committee staff in 2013, one way this could be accomplished is through its continuing competence requirements. However, this would depend on the availability of providers. Alternatively, the CBOT could work with DCA’s SOLID unit to develop a mandatory training unit for applicants and renewing licensees. Last year, the Board of Professional Engineers, Land Surveyors and Geologists (BPELSG) sought statutory authority to administer an online assessment that would test its licensee’s knowledge of regulatory and procedural requirements (see SB 1085 (Roth), Chapter 629, Statutes of 2016).

The assessment was meant to address similar compliance issues the CBOT experiences. The BPELSG noted that the assessment would not increase expenditures and had the potential to significantly decrease enforcement expenditures and cycle times. Further, the assessment had no pass/fail component, it was composed of a series of questions that, if answered incorrectly, would guide the user to the correct answer. Ideally, the assessment will improve applicant and licensee compliance with regulatory and ethical rules by actively walking them through the questions.

Staff Recommendation: *The Committees may wish to require the CBOT to, at a minimum, amend its application to require an applicant to certify that the applicant has read and understands the laws and regulations. The CBOT should also explain whether requiring a continuing competence course in ethics or developing a non-pass/fail online assessment is feasible (in addition to or instead of an attestation).*

Board Response:

The Board is considering amending the initial licensing requirements to include an attestation that the applicant has read and understands the laws and regulations regarding occupational therapy practice. The Board will consider whether to amend the regulations requiring an ethics course as a condition for license renewal at a future meeting.

In order for an “assessment” (or examination) to be valid, it should be empirically linked to the content outline of an occupational therapy analysis. An occupational analysis defines a profession in terms of the actual tasks new licensees must be able to perform safely and competently at the time of licensure.

Recent documentation submitted by DCA's Office of Professional Examination Services (OPES), estimated that an occupational analysis for the profession could take place over the course of an 18-month period (two FYs) at a cost of approximately \$51, 000. The Board is unable to absorb these costs.

The NBCOT, which administers the national exams for occupational therapists and occupational therapy assistants, is in the process of conducting an occupational analysis, which will be used to validate the examinations. Thus, the Board is considering working with the NBCOT, so that when their occupational analysis is being performed for the national exam, NBCOT could include a 'carve-out' of practitioners from California to identify California specific practice issues. If this happens, NBCOT could provide the Board an occupational analysis at no-cost to the Board in early 2018.

The Board looks forward to reporting the result of the attestation requirement to the Committees in its future Sunset Report.

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

Background: The CBOT has noted that it does not have true reciprocity with other state licensing boards (recognition of out-of-state license by default). However, it utilizes the same educational and examination requirements as the NCBOT, which is also used by every other state. The only apparent difference is submitting to a separate background check and paying a state licensing fee.

Therefore, the CBOT states that all out-of-state applicants, military or not, must complete the same NCBOT certification requirements as all the other applicants. Further, the CBOT does not participate in the approval or development of NCBOT requirements, it simply accepts them because they are the only option under the statute.

However, an applicant licensed in another state or authorized to practice in the military will have already gone through at least two background checks (the NCBOT and the state license) and paid the fees for the NCBOT exam, background check, and the out-of-state license.

Staff Recommendation: *The CBOT should advise the Committees about the specific differences between the state requirements, the NCBOT requirements, and the known requirements of other states and whether there are any duplicative requirements that can be cut out.*

Board Response:

California, consistent with the NBCOT, and all other states that license occupational therapists and occupational therapy assistants, requires applicants complete the national education requirements.

However, California's licensure requirements exceed the NBCOT's and many other states requirements; they do not require applicants to submit fingerprints for criminal background checks. Thus applicants licensed in another state or authorized to practice in the military would not have already gone through DOJ and FBI background checks as required in California. The NBCOT and the majority of other states only require the

applicant to provide a self-certification statement indicating whether they have been convicted of a crime (without the validation provided by a background check). Additionally, NBCOT and some state regulatory agencies also limit criminal history disclosure to felony convictions and exclude misdemeanor convictions.

The NBCOT reviews applicants to determine if they meet the educational requirements to sit for and take the national examination. Other states regulating occupational therapy practice are not uniform in the way they gather or verify information relative to the applicant completing an accredited program and passing the national examination. Thus the Board does not believe there are duplicative eligibility requirements. Best practices necessitate that the Board obtain primary source verification directly from the occupational therapy education program to verify completion of an accredited education program and from NBCOT to verify passage of the required examination.

Out-of-state applicants must provide the Board verification of licensure or endorsement letter from the state or states that the applicant possesses a license. The purpose of this requirement is to determine if the applicant has been the subject of disciplinary action in the state or states they possess licensure. Again, best practices necessitate primary source verification to ensure validity of the information submitted to the Board.

Applicants can identify that they are in the military or a spousal of someone in the military. (This can be done whether the application is completed on-line or a paper application is submitted.) The new BreEZe system adds a modified or ‘flags’ the application so that it lands in a separate queue and processing is expedited. The Board has not received any negative reports or interactions from applicants who have sought expedited application processing for applicants servicing in the military deployment or their spouses.

Additionally, BPC section 2570.4 allows a 60-day license exemption to out-of-state licensed practitioners to provide services in California from the date the Board receives their application for licensure as long as other qualifications within the section are met. This is intended to reduce the impact to the prospective licensee and allow them to practice, pending the issuance of the license.

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

Background: The CBOT has proposed amending the Practice Act to allow the CBOT to approve post-professional education providers, allowing them to describe their courses as “board approved.” It would require the providers to submit an application and, if approved, renew every three years. It would also require an application for each individual course.

The language would have a delayed implementation date of one year (January 1, 2019) and establish the following fees:

- 1) An initial license fee of \$300.
- 2) A renewal fee of no more than \$550 per renewal.
- 3) A one-time review fee of no more than \$90 for each course reviewed.

Staff Recommendation: *The CBOT should discuss the approximate number of post-graduate training programs seeking approval, the subject areas, the approval criteria, and whether this will create disparate education standards between states. The CBOT should also complete the “Fee Bill Worksheet” required by the Committees.*

Board Response:

Since May 2004, the Board has approved 76 providers who offer post-professional courses in the advanced practice areas of physical agent modalities, hand therapy, and swallowing assessment, evaluation and intervention. To date, more than 465 courses have been approved. However, many of the courses have changed in content, the instructor, the amount of time spent in the course, or are no longer given. Since the providers fail to update the Board with this information, the courses that are given are often no longer consistent with the course(s) that have been previously approved.

Providers are approved by expert reviewers only when the provider submits an application requesting for courses they offer to be approved. It is a one-time approval with no follow-up provider verification. Providers can ask for courses to be approved that are offered one time only (e.g. at a conference), offered on-line, or in-person on an on-going basis. (This also includes providers that are located out of state, but that want the course attendees with a California license to be able to submit proof of completing an ‘approved’ course to the Board.)

To be approved by the Board the provider must submit the following:

- A clear statement as to the relevance of the course to the advanced practice area.
- Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
- Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
- Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area.

In order to provide services in an ‘advanced practice area’, occupational therapists must first demonstrate competence to the Board, which includes completing post-professional education and training, as specified. This includes submitting an application and supporting documentation that demonstrates completing the post-professional education and training specified for the practice area.

The requirement to complete post-professional education to practice in a particular area is unique to California and a handful of other states. The requirement to demonstrate competence to the Board to practice in an ‘advanced practice area’ was due, in part, to the fact that there were previously no minimum national education standards in those practice areas. At the time the Board was established, the advanced practice requirement was intended to provide a level of consumer

protection in the event that a license might not have received training in a particular area (e.g. using physical agent modalities) in the education program they completed (which can vary state by state). While the advanced practice requirement does not create disparate education requirements between states, it is a practice requirement designed to ensure competence in a practice area and protect consumers.

The cost of reviewing the providers, their instructors and courses, cannot continue to be absorbed.

In reviewing the language submitted, the Board suggests the following amendments to the legislative proposal relating to post-professional education providers:

- 1) A Provider Application review fee of no more than \$200.
- 2) An Approved Provider Certification fee of \$250.
- 3) A Provider Certification renewal fee of no more than \$550 per renewal.
- 4) A course review fee of \$100.

ISSUE #6: Should the CBOT resume checking the National Practitioner Data Bank for adverse actions against applicants and licensees?

Background: Previously, the CBOT looked up applicants and licensees on probation in the National Practitioner Data Bank (NPDB). The NPDB is a federal databank that records adverse actions taken against health care providers. Information includes medical malpractice payments; adverse actions related to licensure, clinical privileges, and professional society membership; DEA controlled substance registration actions; and exclusions from Medicare, Medicaid, and other federal health care programs.

The CBOT reports that it stopped using the NPDB in December 2013 due to the high cost and the lack of reports. However, the cost of using the NPDB has decreased to \$2 per query, making it more a more affordable consumer protection tool.

Staff Recommendation: *The CBOT should resume checking the NPDB and include the \$2 fee in the “Fee Bill Worksheet” required by the Committees.*

Board Response:

The Board appreciates the Committee's recognition of the value of the NPDB and its support of passing that fee onto applicants. The federal government occasionally changes the 'query' fee. In May 2006, the query fee increased from \$4.25 to \$4.75. In April 2007, Proactive Disclosure Service (PDS) Prototype 'enrollment' service was tested and the query fee was \$3.25; in April 2014 the fee reduced from \$3.25 to \$3.00. In October 2016, the fee was lowered to \$2.00.

Due to fluctuation in fees charged, the Board is reluctant to recommend a specific fee for the query. Instead, the Board would like to see the query fee language be similar to the fingerprint language, which is to simply collect the actual fee charged to the Board and pass it on to the applicant.

The Board's fees are set forth in BPC 2570.16. The Board would appreciate the Committee's support of language (or similar) as set forth below:

Initial license and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars (\$150) per year. The board shall establish the following additional fees:

- (a) An application fee not to exceed fifty dollars (\$50).
- (b) A late renewal fee as provided for in Section 2570.10.
- (c) A limited permit fee.
- (d) A fee to collect fingerprints for criminal history record checks.
- (e) A fee to query the National Practitioner Data Bank.

With the language as proposed above, if the NPDB query fee is \$2.00, then that is how much would be collected from the applicants. If the federal government later raises the NPDB query fee to \$4.00, then that fee would then be passed onto the applicants. This provides the board more protection than specifying a \$2.00 fee in statute, which may be insufficient to cover a future query fee increase. Likewise, the Board cannot collect an amount greater than the query fee or 'make money' off of a fee specified in statute if the actual fee is lesser.

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

Background: Due to the redirection of staff to BreEZe, the CBOT stated it has not been able to devote resources to exploring workforce issues. Once BreEZe was implemented in January 2016, the CBOT was able to incorporate a voluntary survey into the system to collect the following from initial applications and renewals:

- Employment Status (e.g. not employed, whether they work full or part time in California, work full time outside California, retired, or other)
- Location (zip code) of the primary place where they practice and how many hours they work.
- Location (zip code) of any secondary place of practice and how many hours they work.
- Number of years worked.
- Self-employed and if so how many hours they work.
- Asks if they have completed another degree beyond the qualifying degree.
- When they plan to retire.
- Area(s) of current practice (e.g. developmental disabilities, physical disabilities, mental disabilities, home health, skilled nursing, gerontology, wellness, education, etc.)
- Ethnic background and foreign languages spoken

Staff Recommendation: *The CBOT should discuss how it utilizes the demographic information and provide an update on any trends so far.*

Board Response:

The Board intends to utilize the data to develop information pertaining to a workforce study for California practitioners. Data projections from the California Employment Development Department reports there will be an increasing need or demand for occupational therapy practitioners in California. Anecdotal information from therapists and the industry indicate there is an existing demand for occupational therapy practitioners based on how difficult it is to recruit and fill vacant positions.

Board staff needs to submit a service request to the Breeze Service Team to ask that the survey data be extracted for analysis. Since no data has been extracted thus far, we are unable to report on the depth and breadth that the voluntary surveys are being completed or otherwise compile and report on demographics or identify trends.

The survey data is consistent with workforce data that the Office of Statewide Health Planning and Development (OSHPD) require other healthcare licensing Boards to provide on a monthly basis. In the event that OSHPD requires the CBOT to provide workforce data at some future point in time we have proactively taken steps to accommodate such a request.

The Board will look forward to providing comprehensive workforce data and trends in the Board's next Sunset Report.

TECHNOLOGY ISSUES

ISSUE #8: Is the CBOT concerned about ongoing costs for BreEZe implementation?

Background: The CBOT reports it has successfully transitioned to BreEZe in January 2016 as a part of Release 2.0. However, it also reports that for over two years it redirected staff and that BreEZe still requires troubleshooting. Currently, there are currently 12 change requests (System Investigation Requests or SIRs) pending that will add enhancements to the system in future releases. At the time the CBOT submit its report to the Committees, it reported that there have been 495 SIRs completed since Release 2.0.

To handle the increased workload and address backlogs, the CBOT doubled its staff and plans to increase its fees. Some boards, such as the Medical Board, utilize dedicated IT/BreEZe staff. This prevents the need for redirecting specialized staff for atypical tasks, prevents disruption of workflow, and helps improve individual expertise in BreEZe coding and querying. Other boards instead contract with the Medical Board to utilize their dedicated BreEZe staff (e.g. the Board of Podiatric Medicine and the Physician Assistant Board).

Staff Recommendation: *The CBOT should discuss whether it has considered utilizing staff dedicated to BreEZe and whether it could be helpful and reduce the number of staff needed and need for fee increases.*

Board Response:

The level of Board staff resources dedicated to BreEZe maintenance requests is significantly less than those dedicated prior to Release 2 launch, which is when some backlogs accumulated. The level of effort associated with CBOT BreEZe maintenance requests currently is being addressed via as-needed redirection from other CBOT business areas without major interruption to core business processes.

The CBOT has worked with and continues to work with DCA dedicated staff involved with the BreEZe system. During the initial design, development, and testing phases of the BreEZe project a significant amount of CBOT staff resources were required as subject matter experts and mapping business processes. Since BreEZe has gone live, the amount of CBOT staff resources needed has diminished from the initial design and testing phases. Currently two CBOT staff work with DCA dedicated staff to affect enhancements or modifications to the BreEZe system, which is characterized as

'maintenance'. The level of effort for system maintenance, combined with general troubleshooting and report building will likely not justify the utilization of dedicated staff.

Therefore, the CBOT does not believe dedicating a staff member to BreEZe would reduce the existing manpower needed to affect enhancements or modifications to the BreEZe system. The recent augmentation of new CBOT staff was the result of demonstrating an on-going enforcement workload not met with existing resources and not related to the time spent by enforcement staff on the design, development, and testing phase of BreEZe. The need to increase CBOT fees is based on future projected costs associated with the BreEZe system and augmentation of six new staff positions to address existing enforcement workload.

ISSUE #9: Is there a way to disaggregate enforcement data to make it more useful?

Background: While the CBOT has taken steps to try to meet its PM4 targets, it is limited to communication with the outside agencies and diligently monitoring cases. Therefore, additional data may prove useful.

Because of the way PM4 data is aggregated, it is not useful for distinguishing how long a case is at a board before it is sent to the AG for further action and how long the AG's office takes to complete cases. It would be helpful if the CBOT could query BreEZe to pull timelines that distinguish the average length of time the case spends at the desk investigation stage, the DOI, the AG, and the OAH. Knowing this may assist in tailoring solutions to the specific agency.

Staff Recommendation: *The CBOT should discuss whether it is currently possible to disaggregate enforcement data and, if not, whether the CBOT can work with the DCA to develop methods to do so.*

Board Response:

The BreEZe system has the capability to disaggregate enforcement data via a variety of reports and tools. The Department of Consumer Affairs, in partnership with subject matter experts at Boards and Bureaus implemented additional Enforcement performance metrics on February 2, 2017, that identify case aging at key stages of the enforcement process.

The new performance metrics display the amount of time a case spends at the Board for intake and investigation as well as the time spent at the AG. These performance metrics will continue to be reported on a quarterly basis and the source data is accessible to CBOT staff via a BreEZe standard report.

Furthermore, if additional disaggregation of data is needed, reporting tools are available. DCA recently launched a new business intelligence reporting tool that CBOT staff can use to query BreEZe data and build a variety of reports. To the extent a given report or query is too complex, or staff have other workload priorities, DCA IT resources are available to build the report or query to the CBOT staff's specifications.

ISSUE #10: Should the CBOT use other technologies the DCA might have to improve submission compliance and processing times for primary source documentation?

Background: Many boards have issues obtaining primary source documentation from outside organizations, such as certifying entities, schools submitting transcripts, and CE providers. One solution may be to utilize new tools for submitting documents to the board.

For instance, the DCA has had an online storage system, or “cloud” storage, that boards can use for document submission and distribution. Currently, a board can use the DCA cloud to provide board members lengthy meeting materials to save on postage and time. The new Executive Officer of the Board of Registered Nursing recently proposed an innovative solution to ease the receipt of information from third-party sources by allowing them to directly upload materials directly into a cloud that the DCA manages.

Staff Recommendation: *The CBOT should discuss whether it has considered using the DCA's cloud or other technology tools for primary source document submissions.*

Board Response:

The Board will consult with the DCA Office of Information Services to seek advice and assistance on implementing “cloud” storage technology for secure submission of documents as well as distribution of documents.

Educational institutions have begun implementing similar technology as the Board is receiving an increasing amount of transcripts by secure email through a clearinghouse. In an effort to reduce mailing time and otherwise increase efficiencies related application processing times the Board accepts a variety of documents by email, fax, and as attachments through the BreEZe system. The Board is open to any technology that would promote efficiency in processing times of applications submitted.

ISSUE #11: Should the CBOT utilize additional survey types to improve its survey response rates?

Background: As noted during the CBOT’s prior sunset review and mentioned in its current *2016 Sunset Review Report*, the CBOT’s consumer satisfaction survey has a very low response rate (51 in the last four FYs). A low response rate makes it difficult to develop an accurate picture. In response, the CBOT has begun taking steps to improve its response rate, such as utilizing email reminders, utilizing Quick Response (QR) codes, and self-addressed envelopes. Still, there may be other avenues to utilize. The CBOT has stated that it will increase its use of Twitter, Facebook, and other technologies this year (2017). These platforms might be useful tools to host additional types of surveys.

Staff Recommendation: *The CBOT should advise the Committees on any contemplated solutions to the low consumer satisfaction survey response rates.*

Board Response:

The Board’s goal of increased communication, education, and outreach as outlined in its Strategic Plan should address this going forward. Some of the objectives include:

- Communicate the enforcement process and timeline with complainants and respondents by updating the current enforcement process flowcharts

- to with the disciplinary process timeline and include flowchart in all complaint responses.
- Develop multimedia (videos, webinars and printed materials), and house them on the Board Web site, that would increase student understanding of the application process and general Board information.

As licensees and the public become more familiar with the Board's laws, regulations, processes, procedures, etc., the Board believes the licensees and the public will have more reasonable expectations (of the Board and its staff) This in turn, should resolve lower survey response rates and the low satisfaction rates.

As reported, the CBOT will increase its use of Twitter, Facebook, and other technologies. This will begin once the Board is staffed at a level to focus on these areas.

ISSUE #12: What impediments, other than timing and planning, impact the CBOT's ability to webcast its meetings?

Background: Webcasting is a commonly used and helpful tool for licensees, consumers, and other stakeholders to monitor boards in real-time and better participate when unable to physically attend meetings. While meetings are split between northern and southern California, there are only a few meetings per year and travel to and from meetings can be difficult for many. As a result, webcasting provides greater access. It also improves transparency and provides a level of detail incapable of expressing in the board-approved minutes.

In 2013, the Committees noted that the CBOT webcasts very few meetings and recommended that it webcast more frequently. However, the CBOT reports that it was still unable to do so due to limited DCA resources. It has only webcasted four meetings since 2012 (five years). While no action was taken until this year, the CBOT has noted that it selected its 2017 meeting dates earlier than in years past in hopes that it will be able to webcast more frequently this upcoming year.

Staff Recommendation: *The CBOT should advise the Committees on specific instances in the past four years when the DCA did not have enough resources to assist with webcasting when requested, why the CBOT was not able to select early meeting dates in the past four years, and any other impediments the CBOT faces when trying to webcast its meetings.*

Board Response:

Webcasting services of Board meetings are provided by DCA on a first-come, first-served basis. Unfortunately, most of the Boards under DCA hold four (or more) meetings per year, many of which are held in the same short three - five week period. In the past four years, there has only been one instance in which DCA did not have enough resources to assist with webcasting when requested. However, in order to make it more likely that the Board's meetings are webcast, in 2016, the Board selected its 2017 meeting dates in August rather than at the last Board meeting of the year (December). This enabled the Board to submit its webcast requests earlier; all 2017 meeting dates are confirmed and webcasting will be provided.

The Board assures the Committee it will be able to report more frequent webcasting in its next Sunset Review report.

EDITS TO THE PRACTICE ACT

ISSUE #13: Should the Practice Act be amended to change the CBOT's ratio of public members to professional members?

Background: In February 2015, the U.S. Supreme Court's decision in *North Carolina State Board of Dental Examiners v. Federal Trade Commission* (FTC), and the FTC's subsequent guidance on the issues, opened discussions on the issue of the potential for anti-competitive decisions by state licensing boards. In the case, the Court ruled that the dentist-controlled Board of Dental Examiners violated the Sherman Antitrust Act¹ and that the Board was not actively supervised by the state and therefore was not protected by state-action immunity.

As a result, there has been a lot of discussion surrounding board composition. However, California DCA boards are structured differently and have more inherent protections than the NC Board. Many DCA boards also appreciate the expertise and passion for consumer protection that professional members can bring. Further, subsequent FTC guidance suggests that a single professional member can still be a "controlling majority."

Still, given the findings from the Little Hoover Commission on potential barriers to entry into a profession and potential for protectionism, there may be ways to further balance the boards. Rebalancing licensing boards so that they have a public member majority could do this by increasing the weight of the consumer perspective. While every board is different, it is not uncommon for public members to defer to professional members on issues outside practice issues, such as administration of the board.

However, smaller boards or boards of lesser-known professions may have a difficult time recruiting public members. To deal with this, boards can establish practice committees (some already do) that can be used to fill the gaps in subject matter expertise. Alternatively, some boards might utilize panels of experts during hearings if immediate assistance is necessary. Further, improvements to the appointments process might assist with potential recruitment or training issues. A robust training or helpful documentation by the appointing body or the DCA might help prepare, attract, and improve the retention of public members.

Staff Recommendation: *The CBOT should discuss the pros and cons of rebalancing the ratio of board members and discuss any other potential areas that might need to be addressed, such as recruitment and appointments.*

Board Response:

The composition of Board members, including public and licensee members is specified in statute.

Having a majority of practitioner members is necessary to provide the requisite knowledge and expertise necessary when discussing important Board matters, specifically when imposing discipline against a license or amending regulations. The

¹ 26 Stat. 209, 15 U.S.C. §§ 1–7.

practitioner members know more about the profession/industry and keep abreast of trends in the industry; if they are practicing clinicians, they work and deal closely with consumers.

Having a majority of practitioner members allows the board to have a broad range of experiences and practice areas in which to draw from. If the public members outnumbered the professional members, this could hamper the Board in exercising its duties due to the lack of knowledge and expertise of practitioner members.

The value of the public members is that they have no stakes in the industry and provide some balance to the Board.

Both public and practitioners members bring value to the Board. Collectively the Board, with fairness and consistency, regulates the practice of occupational therapy by executing its policy-making and disciplinary decision-making responsibilities to meet the Board's consumer protection mandate.

ISSUE #14: Are there technical changes that can be made to the Practice Act that may improve the CBOT's operations?

Background: The CBOT has indicated in its *2016 Sunset Review Report* that there are a number of changes to its Practice Act that it would like to request. It states that it has identified several statutory changes that would enhance or clarify the Practice Act assist or assist with consumer protection.

Staff Recommendation: *The CBOT should continue to work with the Committees on the submitted proposals.*

Board Response:

The Board identified eleven (11) legislative proposals in the Sunset Report that were designed to support efficient administration, coordination, and enforcement of the Occupational Therapy Practice Act to protect the health, safety, and welfare of California consumers.

Of these, the Board has identified <insert number> which it considers as high priority or having significant importance in carrying out its regulatory responsibilities and are listed below:

**<Board to identify several proposals from the list below
that it considers as high priority/significant>**

- **Amend BPC Section 146, Violations of specified authorization statutes as infractions; Punishment,**

This proposal would add occupational therapy to the section that would provide the Board the remedy of, among other things, establishing that practicing without a license is an infraction.

- **Amend BPC Section 2570.3, Licensing Requirement.**

This proposal would require providers of post professional education who want to offer ‘board-approved’ courses, to submit an application to the Board; in order to continue to be an approved provider, the provider would need to renew every three years. It would also require an application to be submitted for each post-professional course the provider wants to offer as approved by the Board.

- **Amend BPC Section 2570.16, Fees.**

This proposal would establish several new fees, including: a fee to query the National Practitioner Data Bank, a fee for an application to become an approved post-professional course provider, a renewal fee for post-professional course providers, and a fee for reviewing post-professional education courses.

- **Amending BPC Section 2570.18, Representation to public.**

Licensees earning doctoral degrees are becoming more prevalent. Thus, to ensure consumers are clear on who is a Medical Doctor vs. who is a licensee with a doctoral degree, this proposal would specify that the individual has to, among other things, identify themselves, in both written and spoken communication, as an occupational therapy practitioner. This would also require the Board to draft regulations to define the type of doctoral degrees that are considered to be in a related area of practice or study.

- **Amending BPC Section 2570.20, Duties of board; rules; proceedings**

This proposal would not limit the Board to promulgating regulations specific to professional licensure and to the establishment of ethical standards of practice, but would instead allow the Board to promulgate regulations to carry out the purpose of the chapter.

- **Amending BPC Section 2570.27, Discipline; Initial license issued on probation, to include probation monitoring costs.**

This proposal would allow the Board to, among other things, establish a requirement that a licensee placed on probation pay the Board costs associated with monitoring the licensee while on probation; and the Board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under the section once a licensee has served his or her term of probation.

- **BPC Section 2570.28, Grounds for denial or discipline, relating to infection control guidelines and transmission of infectious diseases.**

This proposal would replace ‘blood-borne’ with ‘infectious’ as the types of diseases that can be transferred.

- **Add new BPC Section to OT Practice Act**

This proposal would require employers to report to the Board, any employees who are terminated or suspended for cause, as specified, and establish consequences for an employer who fails to make a report as required.

- **Add new BPC Section to OT Practice Act**

This proposal would allow an occupational therapist, appointed by the Board, to inspect or require reports from a general or specialized hospital or an other facility providing occupational therapy treatment or services and makes the unauthorized release of personal and protected information by the inspector unprofessional conduct.

- **Add new BPC Section to OT Practice Act**

This proposal would grant occupational therapists immunity from civil damages for services provided during a state of war, state of emergency or during a disaster, except in a case of a willful act or omission or when the practitioner is negligent.

- **Amend Government Code Section 8659, Privileges and Immunities**

This proposal would add occupational therapists to the list of healthcare practitioners who renders services during any state of war emergency, a state of emergency, or a local emergency at the express or implied request of any responsible state or local official or agency, and shall have no liability for any injury sustained by any person receiving services.

The Board appreciates and looks forward to the opportunity of working with the Committees to affect legislative changes to promote efficient administration and enforcement of the Occupational Therapy Practice Act.

CONTINUED REGULATION OF THE PROFESSION

ISSUE #15: Should the State continue to license and regulate OTs and OTAs? If so, should the Legislature continue to delegate this authority to the CBOT and its current membership?

Background: The CBOT has shown a commitment to its mission and a willingness to work with the Legislature to improve consumer protection. However, there is always room for improvement. The CBOT's recent implementation of BreEZe and increased staff should improve the CBOT's operations, but the CBOT should continue to seek ways to improve its budget, efficiency, and consumer outreach efforts.

Staff Recommendation: *The CBOT should continue to regulate OTs and OTAs in order to protect the interests of the public for another four years and should update the Committees on its progress at that time.*