

## **AGENDA ITEM 27**

### **EXECUTIVE OFFICER'S REPORT.**

**a) OPERATIONAL REPORT.**

**b) FISCAL YEAR (FY) 2022-23, FISCAL MONTH (FM) 5 REVENUE AND EXPENDITURE REPORTS.**

**c) FUND CONDITION STATEMENT BASED ON FM 4.**

**d) LICENSING DATA FOR 9/1/2022 – 12/31/2022.**

**e) ENFORCEMENT DATA FOR 9/1/2022 – 12/31/2022**

**f) FUTURE AGENDA ITEMS.**

**g) DATA OR INFORMATION REQUESTED AT PRIOR MEETING. (NO BOARD ACTION CAN BE TAKEN.)**

**h) OTHER INFORMATIONAL ITEMS. (NO BOARD ACTION CAN BE TAKEN.)**

## **AGENDA ITEM 27**

### **a) OPERATIONAL REPORT.**



## Memorandum

**Date:** February 4, 2023

**To:** CBOT Members

**From:** Heather Martin, Executive Officer

**Subject:** Executive Officer Report

### a) Operational report.

The Board recently filled several positions:

- A Licensing Technician was hired December 12<sup>th</sup>.
- A Retired Annuitant (former peace officer) was hired December 13<sup>th</sup> to assist with case management in Enforcement on a temporary basis.
- An Office Assistant was hired December 15<sup>th</sup>.
- A part-time Cashier was hired and will start February 13<sup>th</sup>.
- An Administrative Analyst was hired and will start February 13<sup>th</sup>.
- A Retired Annuitant (former peace officer who worked for the Board 11/2021 – 9/2022) will return February 21<sup>st</sup> to assist with case management in Enforcement on a temporary basis.
- An Enforcement Technician was selected as is in the recruitment process with an anticipated start date of March 2<sup>nd</sup>.

The Board's vacant Enforcement Manager was recently re-advertised. We look forward to completing the recruitment processing and introducing the new Enforcement Manager at the Board's May meeting.

It is with great pleasure to announce that after nearly 12 years of exceptional service to the Board, Jody Quesada Novey was promoted to the newly established Licensing and Administration Unit manager position effective February 1<sup>st</sup>.

A package to backfill her position was submitted to HR; we hope the position can be filled by mid to late March.

### b) Fiscal Month (FM) 6 Revenue and Expenditure reports.

Revenue and Expenditure information for fiscal month (FM) 6 is included.

- Current year to date revenue earned: \$1,780,383
- Current year expenditures plus encumbrances: \$1,630,826

Snapshot of past annual revenue and expenditures:

FY 2021-22: Revenue collected \$2.866m; expenditures \$2.740m

FY 2020-21: Revenue collected \$2.490m; expenditures \$2.640m

**c) Fund Condition**

The Fund Condition shows that, if revenue is earned as projected and expenditures occur as projected, the Board will end next fiscal year with 1.5 months in reserve and projected to go negative the following year. This further demonstrates the necessity of increasing fees to ensure the Board's future fiscal solvency.

**d) Licensing data.**

Included is the standard report for activity October 1 – December 31, 2022.

**e) Enforcement data.**

Included are standard reports for October 1 – December 31, 2022, including:

- Cases/Complaint data
- Citations issued to OTs
- Citations issued to OTAs
- Pending case at the Office of the Attorney General and Final Decision(s)
- Listing of current probationers

**f) Future Agenda Items.**

Included is the list of future agenda items, including those prioritized for the February meeting and those that need to be prioritized.

**g) Data/Information requested at prior meeting.**

Nothing to report.

**h) Other informational items.**

Provided are the following:

- AOTA Model Practice Act
- Professional License Report

It's time to complete your Form 700 for last year (1/1 – 12/31/2022). Please try to complete this by the end of the month. If you didn't receive an email reminder, please let me know.

The email was sent from: NetFile on behalf of Office of Human Resources.

## **AGENDA ITEM 27**

**b) FISCAL YEAR (FY) 2022-23, FISCAL MONTH (FM) 5 REVENUE AND EXPENDITURE REPORTS.**

# CBOT Revenue Report

Fiscal Year: 2022-2023, Fiscal Month 6

	Current Month	YTD
<b>Delinquent Fees</b>	<b>\$3,510</b>	<b>\$21,450</b>
Delinquent Renewal OT	\$2,565	\$18,090
Delinquent Renewal OTA	\$945	\$3,360
<b>Other Regulatory Fees</b>	<b>\$6,537</b>	<b>\$28,824</b>
Cite & Fine	\$5,665	\$23,335
Duplicate License OT	\$575	\$2,125
Duplicate License OTA	\$75	\$600
Franchise Tax Board - Cite Fine Collection	\$222	\$2,764
<b>Other Regulatory License and Permits</b>	<b>\$37,640</b>	<b>\$237,595</b>
Initial License OT	\$24,201	\$138,964
Initial License OTA	\$5,263	\$39,406
Limited Permit OT	\$500	\$4,000
Limited Permit OTA	\$0	\$800
Retired Status OT	\$450	\$2,000
Retired Status OTA	\$25	\$500
Application Fee OT	\$5,150	\$38,050
Application Fee OTA	\$1,500	\$13,000
Refunded Reimbursements	\$0	-\$196
Suspended Revenue	\$551	\$2,611
Prior Year Revenue Adjustment	\$0	-\$1,540
<b>Other Revenue</b>	<b>\$2,030</b>	<b>\$21,194</b>
Misc Service To Public General	\$2,030	\$15,085
Investment Income-Surplus Money Investment	\$0	\$5,911
Canceled Warrants Revenue	\$0	\$198
<b>Renewal Fees</b>	<b>\$209,330</b>	<b>\$1,471,320</b>
Renewal OT	\$172,550	\$1,221,820
Renewal OTA	\$31,500	\$210,720
Restore License To Active OT	\$0	\$270
Restore License To Active OTA	\$0	\$210
Inactive Renewal OT	\$4,440	\$32,420
Inactive Renewal OTA	\$840	\$5,880
Over/Short Fees Renewals	\$0	\$4
<b>TOTAL Revenue</b>	<b>\$260,910</b>	<b>\$1,780,383</b>
<b>Scheduled Reimbursements</b>	<b>\$2,499</b>	<b>\$16,317</b>
Fingerprint Reports	\$2,499	\$16,317
<b>Unscheduled Reimbursements</b>	<b>\$608</b>	<b>\$10,876</b>
US Cost Recovery	\$608	\$10,876
<b>TOTAL Reimbursements</b>	<b>\$3,107</b>	<b>\$27,193</b>

**CBOT Expenditure Report**

Fiscal Year: 2022 - 2023

FM: 6

<b>PERSONAL SERVICES</b>					
	Budget	Current Month	YTD	Encumb	YTD + Encumb
<b>5100 PERMANENT POSITIONS</b>	<b>\$1,151,000</b>	<b>\$72,804</b>	<b>\$423,735</b>	<b>\$0</b>	<b>\$423,735</b>
Earnings - Permanent Civil Service Employee	\$1,069,000	\$63,876	\$370,450	\$0	\$370,450
Earnings - Exempt/Statutory Employee	\$82,000	\$8,928	\$53,285	\$0	\$53,285
<b>5100 TEMPORARY POSITIONS</b>	<b>\$4,000</b>	<b>\$4,344</b>	<b>\$23,020</b>	<b>\$0</b>	<b>\$23,020</b>
Temp Help	\$4,000	\$4,344	\$23,020	\$0	\$23,020
<b>5105-5108 PER DIEM, OVERTIME, &amp; LUMP SUM</b>	<b>\$20,000</b>	<b>\$6,412</b>	<b>\$9,793</b>	<b>\$0</b>	<b>\$9,793</b>
Board Members	\$20,000	\$1,300	\$3,100	\$0	\$3,100
OT Earnings Other than Temp Help	\$0	\$5,112	\$6,693	\$0	\$6,693
<b>5150 STAFF BENEFITS</b>	<b>\$753,000</b>	<b>\$46,231</b>	<b>\$256,336</b>	<b>\$0</b>	<b>\$256,336</b>
Dental Insurance	\$2,000	\$501	\$3,000	\$0	\$3,000
Disability Leave - Nonindustrial	\$2,000	\$0	\$0	\$0	\$0
Employee Assistance PGM Fee	\$0	\$18	\$91	\$0	\$91
Health Insurance	\$256,000	\$7,049	\$45,432	\$0	\$45,432
Life Insurance	\$0	\$10	\$59	\$0	\$59
Medicare Taxation	\$6,000	\$1,150	\$6,241	\$0	\$6,241
OASDI	\$81,000	\$4,648	\$25,260	\$0	\$25,260
Retirement - General	\$354,000	\$22,542	\$131,599	\$0	\$131,599
Unemployment Insurance	\$3,000	\$0	\$0	\$0	\$0
Vision Care	\$1,000	\$91	\$571	\$0	\$571
Workers' Compensation	\$28,000	\$0	\$0	\$0	\$0
SCIF Allocation Cost	\$0	\$5,461	\$16,383	\$0	\$16,383
Other Post-Employment Benefits	\$20,000	\$2,364	\$13,806	\$0	\$13,806
Staff Benefits - Other	\$0	\$2,398	\$13,895	\$0	\$13,895
<b>PERSONAL SERVICES</b>	<b>\$1,928,000</b>	<b>\$129,791</b>	<b>\$712,884</b>	<b>\$0</b>	<b>\$712,884</b>

<b>OPERATING EXPENSES &amp; EQUIPMENT</b>					
	Budget	Current Month	YTD	Encumb	YTD + Encumb
<b>5301 GENERAL EXPENSE</b>	<b>\$59,000</b>	<b>\$1,990</b>	<b>\$10,927</b>	<b>\$1,363</b>	<b>\$12,291</b>
Fingerprint Reports	\$22,000	\$1,666	\$9,751	\$0	\$9,751
Freight and Drayage	\$0	\$299	\$1,137	\$1,363	\$2,500
Goods - Other	\$37,000	\$0	\$0	\$0	\$0
Office Supplies	\$0	\$25	\$25	\$0	\$25
Subscriptions	\$0	\$0	\$15	\$0	\$15
<b>5302 PRINTING</b>	<b>\$19,000</b>	<b>\$958</b>	<b>\$5,675</b>	<b>\$12,384</b>	<b>\$18,059</b>
Office Copiers - Maintenance	\$0	\$0	\$167	\$613	\$780
Pamphlets, Leaflets, Brochures	\$0	\$958	\$5,508	\$11,771	\$17,279
Printing - Other	\$19,000	\$0	\$0	\$0	\$0
<b>5304 COMMUNICATIONS</b>	<b>\$14,000</b>	<b>\$542</b>	<b>\$1,315</b>	<b>\$0</b>	<b>\$1,315</b>
Central Communication - ATSS	\$0	\$0	\$294	\$0	\$294
Central Communication - CALNET	\$0	\$0	\$55	\$0	\$55
Telephone Services	\$0	\$542	\$966	\$0	\$966
Communications - Other	\$14,000	\$0	\$0	\$0	\$0
<b>5306 POSTAGE</b>	<b>\$18,000</b>	<b>\$0</b>	<b>\$569</b>	<b>\$0</b>	<b>\$569</b>
DCA Postage Allocation	\$0	\$0	\$569	\$0	\$569
Postage - Other	\$18,000	\$0	\$0	\$0	\$0
<b>53202-204 IN STATE TRAVEL</b>	<b>\$25,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Travel - In State - Other	\$25,000	\$0	\$0	\$0	\$0
<b>5322 TRAINING</b>	<b>\$9,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
Training - Tuition & Registration	\$9,000	\$0	\$0	\$0	\$0
<b>5324 FACILITIES</b>	<b>\$147,000</b>	<b>\$11,820</b>	<b>\$68,003</b>	<b>\$67,026</b>	<b>\$135,029</b>
Facilities Operations	\$18,000	\$0	\$0	\$0	\$0
Facilities Planning -Gen Svcs	\$0	\$730	\$1,459	\$0	\$1,459
Rents and Leases	\$129,000	\$0	\$0	\$0	\$0
Rent -Bldgs&Grounds(Non State)	\$0	\$11,091	\$66,544	\$67,026	\$133,569

	Budget	Current Month	YTD	Encumb	YTD + Encumb
<b>53402-53403 C/P SERVICES (INTERNAL)</b>	<b>\$243,000</b>	<b>\$9,246</b>	<b>\$37,436</b>	<b>\$0</b>	<b>\$37,436</b>
Legal - Attorney General	\$197,000	\$7,903	\$36,093	\$0	\$36,093
Office of Adminis Hearings	\$46,000	\$1,343	\$1,343	\$0	\$1,343
<b>53404-53405 C/P SERVICES (EXTERNAL)</b>	<b>\$58,000</b>	<b>\$4,660</b>	<b>\$21,152</b>	<b>\$26,450</b>	<b>\$47,602</b>
Administrative	\$0	\$282	\$1,688	\$0	\$1,688
Subject Matter Experts	\$0	\$750	\$1,481	\$263	\$1,744
Credit Card Service Fee	\$0	\$3,134	\$17,125	\$26,188	\$43,312
Legal - Witness Fees	\$7,000	\$0	\$0	\$0	\$0
Consult & Prof Svcs Extern Oth	\$44,000	\$0	\$365	\$0	\$365
Court Reporter Servs	\$7,000	\$494	\$494	\$0	\$494
<b>5342 DEPARTMENT PRORATA</b>	<b>\$911,000</b>	<b>\$215,750</b>	<b>\$647,250</b>	<b>\$0</b>	<b>\$647,250</b>
Division of Investigation DOI	\$287,000	\$64,750	\$194,250	\$0	\$194,250
Consumer Client Services Division CCSD	\$624,000	\$151,000	\$453,000	\$0	\$453,000
<b>5342 DEPARTMENTAL SERVICES</b>	<b>\$0</b>	<b>\$0</b>	<b>\$252</b>	<b>\$0</b>	<b>\$252</b>
Departmental Services - Other	\$0	\$0	\$252	\$0	\$252
<b>5344 CONSOLIDATED DATA CENTERS</b>	<b>\$14,000</b>	<b>\$1,098</b>	<b>\$8,524</b>	<b>\$0</b>	<b>\$8,524</b>
Consolidated Data Centers	\$14,000	\$1,098	\$8,524	\$0	\$8,524
<b>5346 INFORMATION TECHNOLOGY</b>	<b>\$4,000</b>	<b>\$80</b>	<b>\$80</b>	<b>\$4,328</b>	<b>\$4,408</b>
IT Services - Hardware Maint	\$0	\$61	\$61	\$0	\$61
IT Services - Software Maint	\$0	\$14	\$14	\$0	\$14
IT Supplies (Paper, Toner, etc	\$0	\$0	\$0	\$4,323	\$4,323
E-Waste Recycl & Disposal Fees	\$0	\$5	\$5	\$5	\$10
Information Technology - Other	\$4,000	\$0	\$0	\$0	\$0

	Budget	Current Month	YTD	Encumb	YTD + Encumb
<b>5362-5368 EQUIPMENT</b>	<b>\$0</b>	<b>\$2,489</b>	<b>\$2,620</b>	<b>\$2,588</b>	<b>\$5,208</b>
Furniture	\$0	\$0	\$131	\$0	\$131
Computers & Computer Equipment	\$0	\$2,416	\$2,416	\$2,588	\$5,004
Office Equipment	\$0	\$0	\$0	\$0	\$0
Software	\$0	\$73	\$73	\$0	\$73
<b>OPERATING EXPENSES &amp; EQUIPMENT</b>	<b>\$1,521,000</b>	<b>\$248,633</b>	<b>\$803,803</b>	<b>\$114,139</b>	<b>\$917,942</b>
<b>OVERALL TOTALS</b>	<b>\$3,449,000</b>	<b>\$378,424</b>	<b>\$1,516,686</b>	<b>\$114,139</b>	<b>\$1,630,826</b>

**c) FUND CONDITION STATEMENT BASED ON FM 4.**

**Analysis of Fund Condition (Dollars in Thousands)**

2023-24 Governor's Budget with FM6 (inc Projections)

	<b>Actual 2021-22</b>	<b>CY 2022-23</b>	<b>BY 2023-24</b>	<b>BY +1 2024-25</b>
<b>BEGINNING BALANCE</b>	\$ 1,533	\$ 1,438	\$ 932	\$ 444
Prior Year Adjustment	\$ 71	\$ -	\$ -	\$ -
Adjusted Beginning Balance	\$ 1,604	\$ 1,438	\$ 932	\$ 444
 <b>REVENUES, TRANSFERS AND OTHER ADJUSTMENTS</b>				
Revenues				
4121200 - Delinquent fees	\$ 43	\$ 43	\$ 45	\$ 45
4127400 - Renewal fees	\$ 2,298	\$ 2,542	\$ 2,453	\$ 2,453
4129200 - Other regulatory fees	\$ 52	\$ 57	\$ 52	\$ 52
4129400 - Other regulatory licenses and permits	\$ 437	\$ 450	\$ 460	\$ 460
4143500 - Miscellaneous Services to the Public	\$ 28	\$ 30	\$ 29	\$ 29
4163000 - Income from surplus money investments	\$ 7	\$ 9	\$ 2	\$ -
4171400 - Escheat of unclaimed checks and warrants	\$ 1	\$ 1	\$ 1	\$ 1
Totals, Revenues	\$ 2,866	\$ 3,132	\$ 3,042	\$ 3,040
Operating Transfers To General Fund 0001 (AB84)	\$ -140	\$ -	\$ -	\$ -
Totals, Transfers and Other Adjustments	\$ -140	\$ -	\$ -	\$ -
<b>TOTALS, REVENUES, TRANSFERS AND OTHER ADJUSTMENTS</b>	\$ 2,726	\$ 3,132	\$ 3,042	\$ 3,040
<b>TOTAL RESOURCES</b>	\$ 4,330	\$ 4,570	\$ 3,974	\$ 3,484

	<b>Actual 2021-22</b>	<b>CY 2022-23</b>	<b>BY 2023-24</b>	<b>BY +1 2024-25</b>
Expenditures:				
1111 Department of Consumer Affairs Regulatory Boards, Bureaus, Divisions (State Operations)	\$ 2,695	\$ 3,356	\$ 3,248	\$ 3,248
9892 Supplemental Pension Payments (State Operations)	\$ 42	\$ 42	\$ 42	\$ 42
9900 Statewide General Administrative Expenditures (Pro Rata) (State Operations)	\$ 155	\$ 240	\$ 240	\$ 240
<b>TOTALS, EXPENDITURES AND EXPENDITURE ADJUSTMENTS</b>	<b>\$ 2,892</b>	<b>\$ 3,638</b>	<b>\$ 3,530</b>	<b>\$ 3,530</b>
<b>FUND BALANCE</b>				
Reserve for economic uncertainties	\$ 1,438	\$ 932	\$ 444	\$ -46
Months in Reserve	4.7	3.2	1.5	-0.2

**NOTES:**

1. Assumes workload and revenue projections are realized in BY +1 and ongoing.
2. Expenditure growth projected at 3% beginning BY +1.

## **AGENDA ITEM 27**

**d) LICENSING DATA FOR 9/1/2022 – 12/31/2022.**

**Applications Data:  
October 1, 2022 – December 31, 2022**

Transaction Type	Oct		Nov		Dec		Total Received 2Q	Total Approved 2Q	Average Received per Month	Average Approved per Month
	Received	Approved	Received	Approved	Received	Approved	Received	Approved	Received	Approved
OT License Apps	113	86	132	125	99	121	344	332	115	111
OT License Issued	82	82	120	118	118	115	320	315	107	105
OT Limited Permit Apps	4	7	3	2	2	4	9	13	3	4
OT Limited Permit Issued	4	6	2	1	4	5	10	12	3	4
OTA License Apps	42	32	35	39	30	39	107	110	36	37
OTA License Issued	34	34	40	39	40	38	114	111	38	37
OTA Limited Permit Apps	1	1	3	1	3	1	7	3	2	1
OTA Limited Permit Issued	1	1	0	0	0	0	1	1	0	0
A/P – Hand Therapy	7	12	3	5	13	0	23	17	8	6
A/P – PAMs	11	34	11	16	10	6	32	56	11	19
A/P - Swallowing	1	9	6	10	1	0	8	19	3	6
Duplicate License	9	10	11	11	38	28	58	49	19	16
Set Inactive to Active	2	3	3	3	3	0	8	6	3	2
Name Changes	27	22	12	22	23	7	62	51	21	17
Address Changes	253	253	209	209	241	241	703	703	234	234
Verifications	76	62	55	61	65	51	196	174	65	58
Set to Retired	19	22	10	9	15	16	44	47	15	16
Set Retired to Active	0	0	1	1	1	0	2	1	1	0
<b>Totals</b>	<b>686</b>	<b>676</b>	<b>656</b>	<b>672</b>	<b>706</b>	<b>672</b>	<b>2,048</b>	<b>2,020</b>	<b>683</b>	<b>673</b>
Transaction Type		Oct		Nov		Dec		Total Approved 2Q		Average Approved per Month
OT Renewals		600		544		654		1798		599
OTA Renewals		148		145		157		450		150
<b>Totals</b>		<b>748</b>		<b>689</b>		<b>811</b>		<b>2248</b>		<b>749</b>

**e) ENFORCEMENT DATA FOR 10/1/2022 – 12/31/2022.**

- **Cases/Complaints Data**
- **Citation data - OTs**
- **Citation data - OTAs**
- **Cases pending at AGO and Final Decision**
- **Current probationers**

## CASES/COMPLAINTS DATA

**October 1, 2022 – December 31, 2022**

CATEGORY	QUANTITY
<b><i>Total Complaints Opened/Received:</i></b>	<b>137</b>
Conviction/Arrest Investigations:	33
Complaints Opened/Received:	103
Petition for Reinstatement Received	1
Applications Denied per BPC 480:	1
Complaints Closed	120
<b><i>Total Complaints/Cases Pending:</i></b>	<b>415</b>
DOI Investigations Initiated:	1
DOI Investigation Reports Received:	1
<b><i>DOI Investigations Pending:</i></b>	<b>2</b>
Accusations Filed:	2
Statement of Issues Filed:	0
PC 23 Issued:	0
ISO Issued:	0
Petition to Revoke Probation (PTR) Filed:	0
Accusation and PTR Filed:	0
Case(s) Withdrawn:	0
Case(s) Dismissed	0
<b><i>Total Cases Pending at Office of the Attorney General</i></b>	<b>9</b>
Cease Practice Order(s) Issued:	0
Cease Practice Order(s) Lifted:	0
Final Decisions Effective:	1

## OT CITATIONS

**October 1, 2022 - December 31, 2022**

#	VIOLATION						FINE	FINE REDUCE	TOTAL FINE DUE	DATE ISSUED	APPEAL RECEIVED					PAYMENT			
	FTC	UPC	ULP	PDU	ADC	OTHER					ABATE	ICRC	ADMIN	DISMISSED	WITHDRAW	Payment Date	Paid in Full	Payment Amount	Balance (OTA)
1			1				\$800	\$350	\$450	09/01/22	0	1				11/16/2022	1	\$450	\$0
1						1	\$700	\$150	\$550	09/01/22	0	1				11/1/2022	1	\$550	\$0
1			1				\$150	\$0	\$150	9/1/22	0					9/26/2022	1	\$150	\$0
1				1			\$600	\$0	\$600	09/09/22	1					9/21/2022	1	\$600	\$0
1			1				\$225	\$0	\$225	12/01/22	0					12/29/2022	1	\$225	\$0
1			1				\$225	\$0	\$225	12/05/22	0					12/7/2022	1	\$225	\$0
1			1				\$1,300	\$0	\$1,300	12/05/22	0					12/10/2022	1	\$1,300	\$0
1			1				\$225	\$0	\$225	12/05/22	0					12/28/2022	1	\$225	\$0
1			1				\$225	\$0	\$225	12/01/22	0					12/12/2022	1	\$225	\$0
1	1						\$600	\$0	\$600	12/01/22	1						0	\$0	\$600
1						1	\$1,000	\$0	\$1,000	12/01/22	0						0	\$0	\$1,000
1				1			\$100	\$0	\$100	11/29/22	0					12/5/2022	1	\$100	\$0
1				1			\$100	\$0	\$100	12/07/22	1						0	\$0	\$100
1				1			\$600	\$0	\$600	12/07/22	1						0	\$0	\$600
1				1			\$30	\$0	\$300	12/07/22	0						0	\$0	\$300
1			1				\$800	\$0	\$800	12/08/22	0						0	\$0	\$800
1			1				\$300	\$0	\$300	12/20/22	0						0	\$0	\$300
1			1				\$1,600	\$0	\$1,600	12/21/22	0						0	\$0	\$1,600
1			1				\$1,600	\$0	\$1,600	12/21/22	0						0	\$0	\$1,600
1			1				\$500	\$0	\$500	12/23/22	0						0	\$0	\$500

## OT CITATIONS

**October 1, 2022 - December 31, 2022**

#	VIOLATION						FINE	FINE REDUCE	TOTAL FINE DUE	DATE ISSUED	APPEAL RECEIVED					PAYMENT			
	FTC	UPC	ULP	PDU	ADC	OTHER					ABATE	ICRC	ADMIN	DISMISSED	WITHDRAW	Payment Date	Paid in Full	Payment Amount	Balance (OTA)
1	1						\$600	\$0	\$600	12/29/22	1						0	\$0	\$600
1			1				\$500	\$0	\$500	12/29/22	0						0	\$0	\$500
<b>22</b>	<b>2</b>	<b>0</b>	<b>13</b>	<b>5</b>	<b>0</b>	<b>2</b>	<b>\$12,780</b>	<b>\$500</b>	<b>\$12,550</b>		<b>5</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>10</b>	<b>\$4,050</b>	<b>\$8,500</b>

**Violation Key:**

FTC - Failure to Cooperate  
 UPC - Unprofessional Conduct  
 ULP - Unlicensed Practice

PDU - Continuing Education  
 ADC - Failure to Notify of Address Change  
 OTHER (Negligence, etc.)

## OTA CITATIONS

**October 1, 2022 - December 31, 2022**

#	VIOLATION						FINE	FINE REDUCED	TOTAL FINE DUE	DATE ISSUED	APPEAL REC'D					PAYMENT			
	FTC	UPC	ULP	PDU	ADC	OTHER					ABATE	ICRC	ADMIN	DISMISSED	WITHDRAWN	Payment Date	Paid in Full	Payment Amount	Balance (OTA)
1	1						\$600	\$0	\$600	10/4/2022	1					11/1/2022	1	\$600	\$0
1	1						\$600	\$0	\$600	12/1/2022	1						0	\$0	\$600
1			1				\$800	\$0	\$800	12/5/2022						1/4/2023	1	\$800	\$0
1			1				\$150	\$0	\$150	12/29/2022							0	\$0	\$150
<b>4</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>\$2,150</b>	<b>\$0</b>	<b>\$2,150</b>		<b>2</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		<b>2</b>	<b>\$1,400</b>	<b>\$750</b>

**Violation Key:**

FTC - Failure to Cooperate  
 UPC - Unprofessional Conduct  
 ULP - Unlicensed Practice

PDU - Continuing Education  
 ADC - Failure to Notify of Address Change  
 OTHER (Negligence, etc.)

## CASES PENDING WITH THE OFFICE OF THE ATTORNEY GENERAL (AGO)

Date Transmitted	Complaint Number	Case Type	Current Status
6/23/2021	2021-219	ACC	Hearing held on 11/7/2022; Proposed Decision Received 12/5/2022; to Board for vote on 2/9/2023
12/31/2021	2019-231	ACC	Accusation served 5/13/2022; Notice of Defense received 5/27/2022; Hearing Date set for 2/21/2023
1/20/2022	2021-284	ACC	Accusation served to respondent 12/22/2022; Default Decision received 1/20/2023; to Board for vote on 2/9/2023
2/25/2022	2020-426	ACC	Accusation served 11/30/2022; No NOD received; Default Decision requested on 12/20/2022
9/12/2022	2020-531	PTR	Petition to revoke served by Board on 9/12/2022; Hearing held on 12/19/2022 continued to 2/2/2023
9/29/2022	2020-599	SUR	Referred to AGO for Surrender 9/29/2022; Received revised surrender of license on 12/9/2022
10/13/2022	2023-161	ACC	Accusation served on 11/22/2022; Default Decision received 12/30/2022; to Board for vote on 2/9/2023
11/28/2022	2023-153	ACC	Referred to AGO on 11/28/2022; Accusation received on 12/30/2022; under review
11/30/2022	2021-733	ACC	Referred to AGO for on 11/30/2022; Transmittal accepted by AGO on 12/7/2022
12/23/2022	2021-976	ACC	Referred to AGO for an Accusation on 12/23/2022; Transmittal accepted by AGO on 1/4/2023
12/30/2022	2023-263	ACC	Referred to AGO for an Accusation on 12/30/2022; accepted by AGO on 1/4/2023

## FINAL DECISION

Effective	Name	Type	Violation
10/9/2022	Jaju, Niraj	Accusation Dismissed	Unprofessional Conduct

## LICENSEES CURRENTLY ON PROBATION

**October 1, 2022 – December 31, 2022**

NAME	LICENSE #	LENGTH OF PROBATION	EFFECTIVE DATE	COMPLETION DATE
Alvarado, Francisco	OT 4563	3 years	09/19/2019*	10/19/2022
Bastianelli, Nachele	OT 11457	3 years	04/17/2022	
Campbell, Steven	OTA 183	3 years	07/26/2019*	
De Jesus, Geraldine	OT 4769	3 years	10/22/2021*	
Deras, Carlos	OTA 3975	4 years 1 year	12/17/2018* 04/11/2023*	
Dowd, Joshua	OT 18574	3 years	03/27/2018*	
Edwards, Anna	OTA 2453	3 years	04/26/2019*	
Gonzalez, Susana	OTA 1298	3 years	07/23/2021	
Harding III, Jack	OT 11707	3 years	06/03/2021	
Heng, Sonny	OT 18476	3 years	11/03/2021*	
Jordan, Laura	OT 5826	3 years	08/29/2021*	
Kelley, Anjuli	OT 11186	3 years 3 years	01/16/2014* 03/12/2023	
Lopez (Kozina), Lindsay	OTA 3469	3 years	11/27/2021*	Surrendered 10/13/2022
McCoy-Guzman, Tracy	OTA 2109	3 years	03/17/2022*	
Morrison, Crystal	OTA 1561	3 years	04/16/2021	
Pompanescu, Duane	OT 3017	3 years	06/03/2021	
Powell, Diana C.	OT 6367	3 years	06/03/2016*	
Provost, Ericka	OT 16010	3 years	12/26/2021*	
Ryskalczyk, Roxanne	OT 5654	3 years	08/29/2021*	
Schmidt, Rebecca	OT 8291	3 years	11/27/2009*	
Shin, Judy	OT 5682	4 years	12/02/2019	
Suggs, Monica	OTA 1101	2.5 years	03/30/2019*	
Tolbert, Kristine	OT 4410	4 years	03/29/2019*	
Wilson, Candice	OTA 1436	3 years	07/16/2020*	

\* Probation "tolled" or extended beyond original expiration date.

**f) FUTURE AGENDA ITEMS.**

# **Listing of Future Agenda Items Approved at Previous Meetings**

## **Items Prioritized for February Meeting**

1. Keep Fee Increase as a standing item for continued updates.
2. Identify committee member appointment criteria for non-licensure/public member to serve on Board committees.
3. Consider appointing Disaster Preparedness/Disaster Response ad Hoc committee.
4. Consideration and possible action on determining the maximum number of students completing a clinical entry-level doctoral capstone that can be supervised by an occupational therapist who is concurrently supervising occupational therapy assistants, limited permit holders or students completing their fieldwork. *New*
5. Discussion and possible action on whether occupational therapists working in pelvic health can perform internal (digital) examinations and provide various treatments. *New*

## **Future Agenda Items Not Yet Prioritized**

1. Discuss the potential to cost sharing with California occupational therapy programs for the 'employer' letter.
2. Combined 2, 3 & 4 from previous list.
  - Develop FAQs to explain revenue and expenditures to licensees in a narrative format to explain the data that pertains to the public comments.
  - Discuss and decide on methods of education and outreach for the fee increase.
  - Provide a report detailing:
    - Explain why fee increase needed
    - Develop outreach plan to educate
3. ~~Identify committee member appointment criteria for non-licensure/public member to serve on Board committees.~~
4. ~~Consider appointing Disaster Preparedness/Disaster Response ad Hoc committee.~~
5. Make appointments to other committees, as appropriate.
6. Schedule a townhall/meeting with the California OT and OTA programs to share the Occupational Therapy Assistant Workforce Needs Assessment and seek further feedback.
7. Discussion on Corporation Name language for future agenda.
8. Practice Committee's consideration of the following:
  - Consider whether suture removal is within OT scope of practice.
  - Review of ACOTE Guidelines and consider reducing advanced practice education and training requirements for students graduating after a certain date (date TBD).
  - Review of education and training requirements for licensees demonstrating competence in advanced practice areas and consideration of reducing education/training hours needed.
  - Recommendation on records retention requirement for an occupational therapy business that closes or is sold or if the practitioner is no longer in private practice.

## **AGENDA ITEM 27**

**h) OTHER INFORMATIONAL ITEMS. (NO BOARD ACTION CAN BE TAKEN.)**

# MODEL OCCUPATIONAL THERAPY PRACTICE ACT

The Model Occupational Therapy Practice Act (Model Practice Act) has been developed by the State Affairs Group of the American Occupational Therapy Association, in collaboration with the Commission on Practice for use by state occupational therapy associations or state regulatory boards interested in developing or revising legislation to regulate the practice of Occupational Therapy. The Model Practice Act also includes the definition of Occupational Therapy, which is approved by the Representative Assembly Coordinating Committee (RACC) on behalf of the Representative Assembly (RA) and is included in the Scope of Practice Official Document<sup>1</sup>. The current definition was approved in 2021.

The Model Practice Act must be reviewed and carefully adapted to comply with a state's legislative requirements and practices. It must also be adapted to reflect a state's administrative and regulatory laws and other legal procedures. The Model Practice Act leaves blanks or indicates alternatives in brackets when further detail needs to be considered or when adaptations are especially necessary. The term "state" is used throughout the document for ease of reading. Other jurisdictions, such as the District of Columbia and Puerto Rico, will need to modify the language accordingly.

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<sup>1</sup> American Occupational Therapy Association. (2021). Occupational therapy scope of practice. *American Journal of Occupational Therapy*, 75(Suppl. 3), 7513410030. <https://doi.org/10.5014/ajot.2021.75S3005>

## MODEL OCCUPATIONAL THERAPY PRACTICE ACT TABLE OF CONTENTS

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## **Article I. General Provisions**

1.01 Title [Title should conform to state requirements. The following is suggested for appropriate adaptation.]

An Act providing for the licensure of Occupational Therapists and Occupational Therapy Assistants; for a Board of Occupational Therapy practice and its powers and duties; and for related purposes.

### 1.02 Short Title

This Act shall be known and may be cited as the "Occupational Therapy Practice Act."

### 1.03 Legislative Intent and Purpose

The Legislature finds and declares that the Occupational Therapy Practice Act is enacted to safeguard public health, safety, and welfare; to protect the public from incompetent, unethical, or unauthorized persons; to assure a high level of professional conduct on the part of Occupational Therapists and Occupational Therapy Assistants; and to assure the availability of high quality Occupational Therapy services to persons in need of such services. It is the purpose of this Act to provide for the regulation of persons representing themselves as Occupational Therapists or as Occupational Therapy Assistants, or performing services that constitute Occupational Therapy.

### 1.04 Definitions

- (1) "Act" means the Occupational Therapy Practice Act.
- (2) "Aide" means a person who is not licensed by the Board and who provides supportive services to Occupational Therapists and Occupational Therapy Assistants. An Aide shall function only under the guidance, responsibility, and supervision of the licensed Occupational Therapist or an Occupational Therapy Assistant who is appropriately supervised by an Occupational Therapist. An Aide does not provide occupational therapy services. An Aide must first demonstrate competence before performing assigned, delegated, client related and non-client related tasks.
- (3) "Association" means the \_\_\_\_\_ State Occupational Therapy Association.
- (4) "Board" means the \_\_\_\_\_ State Board of Occupational Therapy.
- (5) "Good Standing" means the individual's license is not currently suspended or revoked by any State regulatory entity.
- (6) "Continuing Competence" means the process in which an occupational therapist or occupational therapy assistant develops and maintains the knowledge, critical reasoning, interpersonal skills, performance skills, and ethical practice necessary to perform their occupational therapy responsibilities.
- (7) "The Practice of Occupational Therapy" means the therapeutic use of everyday life occupations with persons, groups, or populations (clients) to support occupational performance and participation. Occupational therapy practice includes clinical reasoning and professional judgment to evaluate, analyze, and diagnose occupational challenges (e.g., issues with client factors, performance patterns, and performance skills) and provide occupation-based interventions to address them. Occupational therapy services include habilitation, rehabilitation, and the promotion of physical and mental health and wellness for clients with all levels of ability-related needs. These services are provided for clients who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Through the provision of skilled services and engagement in everyday activities, occupational therapy promotes physical and mental health and well-being by supporting occupational performance in people with, or at risk of experiencing, a range of developmental,

physical, and mental health disorders. The practice of occupational therapy includes the following components:

- a) Evaluation of factors affecting activities of daily living (ADLs), instrumental activities of daily living (IADLs), health management, rest and sleep, education, work, play, leisure, and social participation, including
  1. Context (environmental and personal factors) and occupational and activity demands that affect performance
  2. Performance patterns including habits, routines, roles, and rituals
  3. Performance skills, including motor skills (e.g., moving oneself or moving and interacting with objects), process skills (e.g., actions related to selecting, interacting with, and using tangible task objects), and social interaction skills (e.g., using verbal and nonverbal skills to communicate)
  4. Client factors, including body functions (e.g., neuromuscular, sensory, visual, mental, psychosocial, cognitive, pain factors), body structures (e.g., cardiovascular, digestive, nervous, integumentary, and genitourinary systems; structures related to movement), values, and spirituality
- b) Methods or approaches to identify and select interventions, such as
  1. Establishment, remediation, or restoration of a skill or ability that has not yet developed, is impaired, or is in decline
  2. Compensation, modification, or adaptation of occupations, activities, and contexts to improve or enhance performance
  3. Maintenance of capabilities to prevent decline in performance in everyday life occupations
  4. Health promotion and wellness to enable or enhance performance in everyday life activities and quality of life
  5. Prevention of occurrence or emergence of barriers to performance and participation, including injury and disability prevention
- c) Interventions and procedures to promote or enhance safety and performance in ADLs, IADLs, health management, rest and sleep, education, work, play, leisure, and social participation, for example:
  1. Therapeutic use of occupations and activities
  2. Training in self-care, self-management, health management (e.g., medication management, health routines), home management, community/work integration, school activities, and work performance
  3. Identification, development, remediation, or compensation of physical, neuromusculoskeletal, sensory-perceptual, emotional regulation, visual, mental, and cognitive functions; pain tolerance and management; praxis; developmental skills; and behavioral skills
  4. Education and training of persons, including family members, caregivers, groups, populations, and others
  5. Care coordination, case management, and transition services
  6. Consultative services to persons, groups, populations, programs, organizations, and communities
  7. Virtual interventions (e.g., simulated, real-time, and near-time technologies, including telehealth and mobile technology)
  8. Modification of contexts (environmental and personal factors in settings such as home, work, school, and community) and adaptation of processes, including the application of ergonomic principles

9. Assessment, design, fabrication, application, fitting, and training in seating and positioning, assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices
  10. Assessment, recommendation, and training in techniques to enhance functional mobility, including fitting and management of wheelchairs and other mobility devices
  11. Exercises, including tasks and methods to increase motion, strength, and endurance for occupational participation
  12. Remediation of and compensation for visual deficits, including low vision rehabilitation
  13. Driver rehabilitation and community mobility
  14. Management of feeding, eating, and swallowing to enable eating and feeding performance
  15. Application of physical agent and mechanical modalities and use of a range of specific therapeutic procedures (e.g., wound care management; techniques to enhance sensory, motor, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills
  16. Facilitating the occupational participation of persons, groups, or populations through modification of contexts (environmental and personal) and adaptation of processes
  17. Efforts directed toward promoting occupational justice and empowering clients to seek and obtain resources to fully participate in their everyday life occupations
  18. Group interventions (e.g., use of dynamics of group and social interaction to facilitate learning and skill acquisition across the life course).
- (8) "Occupational Therapist" means a person licensed to practice Occupational Therapy under this Act. The Occupational Therapist is responsible for and directs the evaluation process, develops the intervention plan, and provides occupational therapy services.
  - (9) "Occupational Therapy Assistant" means a person licensed to assist in the practice of Occupational Therapy under this Act and who shall work under the appropriate supervision of and in partnership with an Occupational Therapist.
  - (10) "Person" means any individual, partnership, unincorporated organization, limited liability entity, or corporate body, except that only an individual may be licensed under this Act.
  - (11) "Supervision" means a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services. The Occupational Therapist is accountable for occupational therapy services provided by the Occupational Therapy Assistant and the Aide. In addition, the Occupational Therapy Assistant is accountable for occupational therapy services they provide. Within the scope of occupational therapy practice, supervision is aimed at ensuring the safe and effective delivery of occupational therapy services and fostering professional competence and development.
  - (12) "Telehealth" means the application of evaluation, consultative, preventative, and therapeutic services delivered through information and communication technology.

## **Article II. Board of Occupational Therapy**

### **2.01 Board Created**

There is hereby established the \_\_\_\_\_ Board of Occupational Therapy hereafter referred to as the Board, which shall be responsible for the implementation and enforcement of this Act.

## 2.02 Board Composition

- (1) The Board shall be composed of at least five individuals appointed by the Governor.
- (2) At least two members shall be licensed as Occupational Therapists in this state.
- (3) At least one member shall be an Occupational Therapy Assistant licensed in this state.
- (4) At least two members shall be representatives of the public with an interest in the rights of consumers of health and wellness services (public member) and a representative of healthcare or education (consumer member).

## 2.03 Qualifications

- (1) Public and Consumer Members must reside in this state for at least 5 years immediately preceding their appointment. Public members and consumer members shall understand or be willing to learn the specific responsibilities of the Board; be willing to learn about and develop contacts with major community service, civic, consumer, public service, religious, and other organizations in their state that have an interest in health care delivery and health care policy, including organizations that represent disadvantaged communities, rural, and non-English speaking populations; and have a track record of advocacy related to furthering consumer interests, especially in the area of health care. Public and consumer members may not be or have ever been Occupational Therapists or Occupational Therapy Assistants or in training to become an Occupational Therapist or Occupational Therapy Assistant. Public and consumer members may not be related to or have a household member who is an Occupational Therapist or an Occupational Therapy Assistant. The consumer member shall have knowledge of the profession of occupational therapy through personal experience. The public member shall have knowledge of the profession of occupational therapy through professional experience in health care reimbursement, regulatory, or policy arenas.
- (2) Occupational Therapy and Occupational Therapy Assistant members must be licensed consistent with state law and reside in the state for at least 5 years, or have a privilege to practice through the Occupational Therapy Licensure Compact, and have been engaged in: rendering occupational therapy services to the public; teaching; consultation; or research in occupational therapy for at least 5 years, including the 3 years immediately preceding their appointment.
- (3) No member shall be a current officer, Board member, or employee of a statewide organization established for the purpose of advocating for the interests of persons licensed under this Act.

## 2.04 Appointments

- (1) Within 90 days after the enactment of this Act, the first Board shall be appointed by the Governor from a list of names submitted by the State Occupational Therapy Association and from nominations submitted by interested organizations or persons in the state.
- (2) Each subsequent appointment shall be made from recommendations submitted by the State Occupational Therapy Association or from recommendations submitted by other interested organizations or persons in the state.

## 2.05 Terms

- (1) Appointments to the Board shall be for a period of 3 years, except for the initial appointments which shall be staggered terms of 1, 2, and 3 years. Members shall serve until the expiration of the term for which they have been appointed or until their successors have been appointed to serve on the Board. No member may serve more than two consecutive 3-year terms or for six consecutive years.

- (2) Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar day of the year in which they are appointed, before commencing the terms prescribed by this section.

#### 2.06 Vacancies

In the event of a vacancy in the office of a member of the Board other than by expiration of a term, the Governor shall appoint a qualified person to fill the vacancy for the unexpired term.

#### 2.07 Removal of Board Members

The Governor or the Board may remove a member of the Board for incompetence, professional misconduct, conflict of interest, or neglect of duty after written notice and opportunity for a hearing. The Board shall be responsible for defining the standards for removal for regulation.

#### 2.08 Compensation of Board Members

Members of the Board shall receive no compensation for their services, but shall be entitled to reasonable reimbursement for travel and other expenses incurred in the execution of their powers and duties.

#### 2.09 Administrative Provisions

- (1) The Board may employ and discharge an Administrator and such officers and employees as it deems necessary, and shall determine their duties in accordance with [applicable State statute].
- (2) [This subsection should be used to include administrative detail covering revenues and expenditures, authentication and preservation of documents, promulgation of rules and regulations, etc., in accordance with prevailing state practice, and to the extent that such detail is not already taken care of in state laws of general applicability.]

#### 2.10 Meetings

- (1) The Board shall, at the first meeting of each calendar year, select a Chairperson and conduct other appropriate business.
- (2) At least three additional meetings shall be held before the end of each calendar year.
- (3) Other meetings, including telecommunication conference meetings, may be convened at the call of the Chairperson or the written request of two of more Board members.
- (4) A majority of the members of the Board shall constitute a quorum for all purposes. The quorum must include at least one Occupational Therapist.
- (5) The Board shall conduct its meetings and keep records of its proceedings in accordance with the provisions of the Administrative Procedure Act of this state.
- (6) All Board meetings and hearings shall be open to the public. The Board may, in its discretion and according to the state's Administrative Procedures Act [or other comparable statute], conduct any portion of its meetings or hearings in executive session, closed to the public.
- (7) The Board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the Board and to speak on any issue under Board jurisdiction.

## 2.11 Powers and Duties

- (1) The Board shall, in accordance with the Administrative Procedures Act, perform all lawful functions consistent with this Act, or otherwise authorized by state law including that it shall:
  - a. Administer, coordinate, and enforce the provisions of this Act;
  - b. Evaluate applicants' qualifications for licensure in a timely manner;
  - c. Establish licensure fees and issue, renew, or deny licenses;
  - d. Issue subpoenas, examine witnesses, and administer oaths;
  - e. Investigate allegations of practices violating the provisions of this Act;
  - f. Make, adopt, amend, and repeal such rules as may be deemed necessary by the Board from time to time for the proper administration and enforcement of this Act;
  - g. Conduct hearings and keep records and minutes;
  - h. Establish a system for giving the public, including its regulated profession, reasonable advance notice of all open Board and committee meetings. Emergency meetings, including telephone or other telecommunication conference meetings, shall be held in accordance with applicable Administrative Procedures Act provisions;
  - i. Communicate disciplinary actions to relevant state and federal authorities, the National Board for Certification in Occupational Therapy (NBCOT), the American Occupational Therapy Association (AOTA) Ethics Commission, and to other State OT licensing authorities;
  - j. Publish at least annually Board rulings, opinions, and interpretations of statutes or rules in order to guide persons regulated by this Act; and
  - k. Establish a system for tracking the amount of time the Board takes to issue an initial license or licensure renewal to an applicant.
- (2) No member of the Board shall be civilly liable for any act or failure to act performed in good faith in the performance of his or her duties as prescribed by law.

## 2.12 Training of New Members

The Board shall conduct and new members shall attend a training program designed to familiarize new members with their duties. A training program for new members shall be held as needed.

## **Article III. Licensing and Examination**

### 3.01 Requirements for Licensure

An applicant applying for a license as an Occupational Therapist or as an Occupational Therapy Assistant shall file a written application provided by the Board, demonstrating to the satisfaction of the Board that the applicant

- (1) Is in good standing as defined in Section 1.04;
- (2) Has successfully completed the minimum academic requirements of an educational program for Occupational Therapists or Occupational Therapy Assistants that is accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE) or predecessor organizations;
- (3) Has successfully completed a minimum period of supervised fieldwork experience required by the recognized educational institution where the applicant met the academic requirements described in Section 3.03 (2); and
- (4) Has passed an examination administered by the National Board for Certification in Occupational Therapy (NBCOT), a predecessor organization, or another nationally recognized credentialing body as approved by the Board.

### 3.02 Internationally Educated Applicants

An Occupational Therapist who is a graduate of a school of occupational therapy that is located outside of the United States and its territories shall:

- (1) Complete occupational therapy education programs (including fieldwork requirements) that are deemed comparable by the credentialing body recognized by the state occupational therapy regulatory board or agency to entry-level occupational therapy education programs in the United States.
- (2) Fulfill examination requirement described in section 3.01(4).

### 3.03 Limited Permit

- (1) A limited permit to practice occupational therapy may be granted to a person who has completed the academic and fieldwork requirements for Occupational Therapist of this Act and has not yet taken or received the results of the entry-level certification examination. This permit shall be valid for \_\_\_ months and shall allow the person to practice occupational therapy under the direction and appropriate supervision of an Occupational Therapist licensed under this Act. This permit shall expire when the person is issued a license under Section 3.01 or if the person is notified that they did not pass the examination. The limited permit may not be renewed.
- (2) A limited permit to assist in the practice of occupational therapy may be granted to a person who has completed the academic and fieldwork requirements of Occupational Therapy Assistant of this Act and has not yet taken or received the results of the entry-level certification examination. This permit shall be valid for \_\_\_ months and shall allow the person to practice occupational therapy under the direction and appropriate supervision of an Occupational Therapist licensed under this Act. This permit shall expire when the person is issued a license under Section 3.01 or if the person is notified that they did not pass the examination. The limited permit may not be renewed.

### 3.04 Temporary License

An applicant who is currently licensed and in good standing to practice in another jurisdiction and meets the requirements for licensure by endorsement may obtain a temporary license while the application is being processed by the Board.

### 3.05 Issuance of License

The Board shall issue a license to any person who meets the requirements of this Act, as described in sections 3.01 or 3.02, upon payment of the prescribed license fee as described in Section 3.09.

### 3.06 Renewal of License

- (1) Any license issued under this Act shall be subject to annual [biennial] renewal and shall expire unless renewed in the manner prescribed by the rules and regulations of the Board.
- (2) The Board shall prescribe by rule continuing competence requirements as a condition for renewal of licensure.
- (3) The Board may provide late renewal of a license upon the payment of a late fee in accordance with its rules and regulations.
- (4) Licensees are granted a grace period of 30 days after the expiration of their licenses in which to renew retroactively if they meet statutory requirements for renewal and pay to the Board the renewal fee and any late fee set by the Board.

- (5) A suspended license is subject to expiration and may be renewed as provided in this Act, but such renewal shall not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity, or in any other conduct or activity in violation of the order of judgement by which the license was suspended.
- (6) A license revoked on disciplinary grounds may not be renewed or restored.

### 3.07 Inactive License

- (1) Upon request, the Board shall grant inactive status to a licensee who is in good standing and maintains continuing competence requirements established by the Board, and
  - a. Does not practice during such "inactive" period as an Occupational Therapist or an Occupational Therapy Assistant, and
  - b. Does not during such "inactive" period hold themselves out as an Occupational Therapist or an Occupational Therapy Assistant.

### 3.08 Re-entry

- (1) Reentering Occupational Therapists and Occupational Therapy Assistants are individuals who have previously practiced in the field of occupational therapy and have not engaged in the practice of occupational therapy for a minimum of 24 months.
- (2) Occupational Therapists and Occupational Therapy Assistants who are seeking re-entry must fulfill re-entry requirements as prescribed by the Board in regulations.

### 3.09 Fees

- (1) Consistent with the Administrative Procedures Act, the Board shall prescribe, and publish in the manner established by its rules, fees in amounts determined by the Board for the following:
  - a. Initial license fee
  - b. Renewal of license fee
  - c. Late renewal fee
  - d. Limited permit fee
  - e. Temporary license fee
  - f. Any other fees it determines appropriate.
- (2) These fees shall be set in such an amount as to reimburse the state, to the extent feasible, for the cost of the services rendered.

## **Article IV. Regulation of Practice**

### 4.01 Unlawful Practice

- (1) No person shall practice occupational therapy or assist in the practice of occupational therapy or provide occupational therapy services or hold themselves as an Occupational Therapist or Occupational Therapy Assistant, or as being able to practice occupational therapy or assist in the practice of occupational therapy or provide occupational therapy services in this state unless they are licensed under the provisions of this Act.
- (2) It is unlawful for any person not licensed as an Occupational Therapist in this state or whose license is suspended or revoked to use in connection with their name or place of business in this state, the words "Occupational Therapist," "licensed Occupational Therapist," "Doctor of Occupational Therapy," or the professional abbreviations "O.T.," "O.T.L.," "M.O.T.," "O.T.D.," "M.O.T./L.," "O.T.D./L." or any word, title, letters, or designation that implies that the person practices or is authorized to practice occupational therapy.

- (3) It is unlawful for any person not licensed as an Occupational Therapy Assistant in this state or whose license is suspended or revoked to use in connection with their name or place of business in this state, the words “Occupational Therapy Assistant,” “licensed Occupational Therapy Assistant,” or the professional abbreviations “O.T.A.” or “O.T.A./L.,” or use any word, title, letters, or designation that implies that the person assists in, or is authorized to assist in, the practice of occupational therapy as an Occupational Therapy Assistant.

#### 4.02 Exemptions

This Act does not prevent or restrict the practice, service, or activities of:

- (1) Any person licensed or otherwise regulated in this state by any other law from engaging in their profession or occupation as defined in the Practice Act under which they are licensed.
- (2) Any person pursuing a course of study leading to a degree in occupational therapy at an accredited educational program, if that person is designated by a title that clearly indicates their status as a student and if they act under appropriate instruction and supervision.
- (3) Any person fulfilling the supervised fieldwork experience requirements of Section 3.01 of this Act, if the experience constitutes a part of the experience necessary to meet the requirement of that section and they act under appropriate supervision.
- (4) Any person fulfilling a supervised or mentored occupational therapy doctoral capstone experience.
- (5) An Occupational Therapist or Occupational Therapy Assistant who is authorized to practice occupational therapy in any jurisdiction, if they practice occupational therapy in this state for the purpose of education, consulting, or training, for the duration of the purpose, as preapproved by the Board;

#### 4.03 Titles and Designations

- (1) A licensed Occupational Therapist may use the words “occupational therapist,” “licensed occupational therapist,” or any words, title, letters, or other appropriate designation that indicates licensure, including but not limited to OT or OT/L, MOT/L, MSOT/L, and OTD/L that identifies the person as a licensed Occupational Therapist in connection with:
  - a. Their name or place of business; and
  - b. Any activity, practice, or service, so long as they are at all times in conformance with the requirements of this Act when providing occupational therapy services.
- (2) A licensed Occupational Therapy Assistant may use the words “occupational therapy assistant,” “licensed occupational therapy assistant,” or any word, title, letters, or other appropriate designation that indicates licensure including, but not limited to OTA or OTA/L that identifies the person as a licensed Occupational Therapy Assistant in connection with:
  - a. Their name or place of business; and
  - b. Any activity, practice, or service, so long as they are at all times in conformance with the requirements of this Act when providing occupational therapy services.

#### 4.04 Grounds for Disciplinary Action

The Board may take action against a licensee as described in Section 4.08 for unprofessional conduct including:

- (1) Obtaining a license by means of fraud, misrepresentation, or concealment of material facts.

- (2) Being guilty of unprofessional conduct as defined by the rules established by the Board, or violating the Code of Ethics adopted and published by the Board.
- (3) Being convicted of a crime in any court except for minor offenses.
- (4) Violating any lawful order, rule, or regulation rendered or adopted by the Board.
- (5) Violating any provision of this Act (or regulations pursuant to this Act).
- (6) Practicing beyond the scope of the practice of occupational therapy.
- (7) Providing substandard care as an Occupational Therapist due to a deliberate or negligent act or failure to act regardless of whether actual injury to the client is established.
- (8) Providing substandard care as an Occupational Therapy Assistant, including exceeding the authority to perform components of intervention selected and delegated by the supervising Occupational Therapist regardless of whether actual injury to the client is established.
- (9) Knowingly delegating responsibilities to an individual who does not have the knowledge, skills, or abilities to perform those responsibilities.
- (10) Failing to provide appropriate supervision to an Occupational Therapy Assistant or Aide in accordance with this Act and Board rules.
- (11) Practicing as an Occupational Therapist or Occupational Therapy Assistant when competent services to recipients may not be provided due to the practitioner's own physical or mental impairment.
- (12) Having had an Occupational Therapist or Occupational Therapy Assistant license revoked or suspended, other disciplinary action taken, or an application for licensure reused, revoked, or suspended by the proper authorities of another state, territory, or country, irrespective of intervening appeals and stays.
- (13) Engaging in sexual misconduct. For the purposes of this paragraph, sexual misconduct includes:
  - a. Engaging in or soliciting a sexual relationship, whether consensual or non-consensual, while an Occupational Therapist or Occupational Therapy Assistant/client relationship exists with that person.
  - b. Making sexual advances, requesting sexual favors, or engaging in physical contact of a sexual nature with patients or clients.
- (14) Aiding or abetting a person who is not licensed as an Occupational Therapist or Occupational Therapy Assistant in this state and who directly or indirectly performs activities requiring a license.
- (15) Abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care.

#### 4.05 Complaints

- (1) Any individual, group, or entity may file a complaint with the Board against any licensed Occupational Therapist or licensed Occupational Therapy Assistant in the state charging that person with having violated the provisions of this Act.
- (2) The complaint shall specify charges in sufficient detail so as to disclose to the accused fully and completely the alleged acts of misconduct for which they are charged.
  - a. "Sufficient Detail" is defined as a complainant's full name and contact information, respondent's full name and contact information when available, alleged violations of Standards of Conduct from the Code, signature or e-signature, and supporting documentation.
- (3) Upon receiving a complaint, the Board shall notify the licensee of the complaint and request a written response from the licensee.

- (4) The Board shall keep an information file about each complaint filed with the Board. The information in each complaint file shall contain complete, current, and accurate information including, but not limited to:
  - a. All persons contacted in relation to the complaint;
  - b. A summary of findings made at each step of the complaint process;
  - c. An explanation of the legal basis and reason for the complaint that is dismissed; and
  - d. Other relevant information.

#### 4.06 Due Process

- (1) Before the Board imposes disciplinary actions, it shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board.
- (2) The Board shall give notice and hold a hearing in accordance with the state's Administrative Procedures Act [or other comparable statute].
- (3) The individual shall be entitled to be heard in their defense, alone or with counsel, and may produce testimony and testify on their own behalf, and present witnesses, within reasonable time limits.
- (4) Any person aggrieved by a final decision of the Board may appeal in accordance with the Administrative Procedures Act [or other comparable statute].

#### 4.07 Investigation

To enforce this Act, the Board is authorized to:

- (1) Receive complaints filed against licensees and conduct a timely investigation.
- (2) Conduct an investigation at any time and on its own initiative without receipt of a written complaint if the Board has reason to believe that there may be a violation of this Act.
- (3) Issue subpoenas to compel the attendance of any witness or the production of any documentation relative to a case.
- (4) For good cause, take emergency action ordering the summary suspension of a license or the restriction of the licensee's practice or employment pending proceedings by the Board.
- (5) Appoint hearing officers authorized to conduct hearings. Hearing officers shall prepare and submit to the Board findings of fact, conclusions of law, and an order that shall be reviewed and voted on by the Board.
- (6) Require a licensee to be examined in order to determine the licensee's professional competence or resolve any other material issue arising from a proceeding.
- (7) Take the following actions if the Board finds that the information received in a complaint or an investigation is not of sufficient seriousness to merit disciplinary action against a licensee:
  - a. Dismiss the complaint if the Board believes the information or complaint is without merit or not within the purview of the Board. The record of the complaint shall be expunged from the licensee's record.
  - b. Issue a confidential advisory letter to the licensee. An advisory letter is non-disciplinary and notifies a licensee that, while there is insufficient evidence to begin disciplinary action, the Board believes that the licensee should be aware of an issue.
- (8) Take other lawful and appropriate actions within its scope of functions and implementation of this Act.

The licensee shall comply with a lawful investigation conducted by the Board.

#### 4.08 Penalties

- (1) Consistent with the Administrative Procedures Act, the Board may impose separately, or in combination, any of the following disciplinary actions on a licensee as provided in this Act:
  - a. Refuse to issue or renew a license;
  - b. Suspend or revoke a license;
  - c. Impose probationary conditions;
  - d. Issue a letter of reprimand, concern, public order, or censure;
  - e. Require restitution of fees;
  - f. Impose a fine not to exceed \$\_\_\_\_, which deprives the licensee of any economic advantage gained by the violation and which reimburses the Board for costs of the investigation and proceeding;
  - g. Impose practice and/or supervision requirements;
  - h. Require licensees to participate in continuing competence activities specified by the Board;
  - i. Accept a voluntary surrendering of a license; or
  - j. Take other appropriate corrective actions including advising other parties as needed to protect their legitimate interests and to protect the public.
- (2) If the Board imposes suspension or revocation of license, application may be made to the Board for reinstatement, subject to the limits of section 3.06. The Board shall have the discretion to accept or reject an application for reinstatement and may require an examination or other satisfactory proof of eligibility for reinstatement.
- (3) If a licensee is placed on probation, the Board may require the license holder to:
  - a. Report regularly to the Board on matters that are the basis of probation;
  - b. Limit practice to the areas prescribed by the Board;
  - c. Continue to review continuing competence activities until the license holder attains a degree of skill satisfactory to the Board in those areas that are the basis of the probation;
  - d. Provide other relevant information to the Board.

#### 4.09 Injunction

- (1) The Board is empowered to apply for relief by injunction, without bond, to restrain any person, partnership, or corporation from any threatened or actual act or practice that constitutes an offense against this Act. It shall not be necessary for the Board to allege and prove that there is no adequate remedy at law in order to obtain the relief requested. The members of the Board shall not be individually liable for applying for such relief.
- (2) If a person other than a licensed Occupational Therapist or Occupational Therapy Assistant threatens to engage in or has engaged in any act or practice that constitutes an offense under this Act, a district court of any county on application of the Board may issue an injunction or other appropriate order restraining such conduct.

#### 4.10 Duty to Refer

- (1) An Occupational Therapist may evaluate, initiate, and provide occupational therapy treatment for a client without a referral from other health service providers.
- (2) An Occupational Therapist shall refer recipients to other service providers or consult with other service providers when additional knowledge and expertise are required or when this would further the client's care needs and health outcomes.

#### 4.11 Telehealth

A licensee may provide occupational therapy services to a client utilizing a telehealth visit if the occupational therapy services are provided in accordance with all requirements of this Act.

- (1) "Telehealth Visit" means the provision of occupational therapy services by a licensee to a client using technology where the licensee and client are not in the same physical location for the occupational therapy service.
- (2) A licensee engaged in a telehealth visit shall utilize technology that is secure and compliant with state and federal law.
- (3) A licensee engaged in a telehealth visit shall be held to the same standard of care as a licensee who provides in-person occupational therapy. A licensee shall not utilize a telehealth visit if the standard of care for the particular occupational therapy services cannot be met using technology.
- (4) Occupational therapy services provided by telehealth can be synchronous or asynchronous.
  - a. "Asynchronous" means using means any transmission to another site for review at a later time that uses a camera or other technology to capture images or data to be recorded.
  - b. "Synchronous" means real-time interactive technology.
- (5) Supervision of Occupational Therapy Assistants, Aides, and students using telehealth technologies must follow existing state law and guidelines regarding supervision, regardless of the method of supervision.

### **Article V. Other**

#### 5.01 Severability

- (1) If a part of this Act is held unconstitutional or invalid, all valid parts that are severable from the invalid or unconstitutional part shall remain in effect.
- (2) If a part of this Act is held unconstitutional or invalid in one or more of its applications, the part shall remain in effect in all constitutional and valid applications that are severable from the invalid applications.

#### 5.02 Effective Date

- (1) The Act, except for Section 3.01, shall take effect ninety (90) days after enactment [unless State practice or requirements require another effective date].
- (2) Section 3.01 of this Act shall take effect 180 days after enactment.

# Professional Licensing Report

Licensing, testing, and discipline in the professions

September/October 2022

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## Licensing

### *U.S. Department of Labor, Bureau of Labor Statistics* **States' differing rates of licensure do not affect interstate migration, study shows**

Supporters of deregulation of professional licensure often contend that licensing requirements discourage people from moving to different states that might not recognize their credentials, while federal policy in recent years has tended to support reducing licensure rates for this very reason, among others. A study published by the Bureau of Labor Statistics' *Monthly Labor Review* in August, however, finds there is no link between states' licensure rates and interstate migration.

The study, "Occupational Licensing and Interstate Migration in the United States," looked at data from 2014-16—during which only 1.5% of the U.S. population moved between state lines in each year—and evaluated the volume of migration from each state to another state as a function of the percentage of workers in licensed occupations.

See *Licensing*, page 3

## Testing

### *U.S. District Court, Northern District of Ohio* **Room scans before proctored remote tests are 4<sup>th</sup> Amendment searches and unconstitutional**

*Issue: Constitutionality of remote surveillance during exams*

A scan of a student's room by a proctor administering a remote exam at a public university was a search

subject to restrictions on unreasonable searches under the Fourth Amendment, a federal judge in Ohio ruled August 22 (*Ogletree v. Cleveland State University*).

The case involved a student at Cleveland State University, Aaron Ogletree, who was subjected to a room scan using his computer's camera prior to taking a proctored remote exam in the spring of 2021, when classes were being offered remotely because of the pandemic.

Ogletree, who was given two hours' notice of the scan, objected, saying that he had 1099 tax forms and medication in his room and would not be able to put them all away before the start of the test.

The student nevertheless performed the room scan, which lasted less than a minute. Scans at the university were visible to other students and they were inconsistently applied.

Ogletree then brought suit against the university, arguing that the room scan violated his Fourth Amendment right to be free from unreasonable searches. Both parties moved for summary judgment, and Judge Philip Calabrese of the U.S. District Court for the Northern District of Ohio issued a decision in favor of the student August 22.

The court first had to decide if the room scan was a search subject to constriction under the Fourth Amendment of the US Constitution. Ogletree argued that students have an expectation of privacy in their houses and bedrooms, where many of the proctored tests would be taking place, and that any scan of the room was thus a "search."

Addressing the University's argument that Ogletree did not have a reasonable expectation of privacy in his bedroom at the time of the exam because room scans are a well-known and standard practice of test proctoring,

Judge Calabrese wrote that "Though schools may routinely employ remote technology to peer into houses without objection from some, most, or nearly all students, it does not follow that others might not object to the virtual intrusion into their home or that the routine use of a practice such as room scans does not violate a privacy interest that society recognizes as reasonable, both factually and legally."

Judge Calabrese agreed with Ogletree that students had a reasonable expectation of privacy in their surroundings even during a remote proctored test. Such scans go into places where others are only expected to enter on invitation, including through the use of cameras, he noted.

The university also argued that the scan was not a search, as it was not coerced, not conducted for a regulatory purpose, not as part of a criminal investigation, and because the student controlled where the exam—and the scan—would take place.

To make their case, they relied on a 1971 Supreme Court case, *Wyman v. James*, which upheld a search of a welfare beneficiary's home as a requirement for receiving benefits. Judge Calabrese rejected these arguments without much explanation, simply noting that the two cases were different and that jurisprudence has changed in the 50 years since *Wyman* was decided.

Turning to whether the room scan was reasonable, Judge Calabrese weighed Ogletree's privacy expectations against the University's interests in assuring he was not cheating on his exam. "It is difficult to see how enrollment in a higher educational institution would limit the core protections of the home under the Fourth Amendment" in Ogletree's case, the judge wrote.

Although Ogletree had "traded away some privacy for the privilege" of taking classes at Cleveland State, he also did not have much choice of his test location, given the strictures in place at that time due to the pandemic.

The scan itself was minimally intrusive, Judge Calabrese wrote. But "Although the intrusion at issue might not strike a person as especially problematic, particularly in the nascent Zoom era, the core protection afforded to the home, the lack of options, inconsistency in application of the policy, and short notice of the scan weigh in Plaintiff's favor."

After considering the university's interests in applying the scans, Judge Calabrese found that they did not outweigh Ogletree's privacy interest. Ogletree had pointed to other options available to proctors to detect cheating, such as monitoring exam takers for suspicious movement, and noted that the scan itself was not likely to be conclusive regarding cheating, since students were not even required to be on camera during the entire exam, and so could have accessed forbidden materials while away from their computers.

Judge Calabrese agreed, noting that other safeguards would achieve the same purpose as the scans and that the university had not actually done much to show the efficacy of the scans. Additionally, "a record of sporadic and discretionary use of room scans does not permit a finding that room scans are truly, and uniquely, effective at preserving test integrity."

In conclusion, Judge Calabrese held, the university's use of the scans was unconstitutional.

## Licensing

### ***No link found between licensing requirements and interstate migration (from page 1)***

The research team used a "gravity" framework in their assessment, which accounts for not only the licensure rules at issue, but also the size and space of the state and other differences in conditions between jurisdictions.

In a survey of previous attempts to analyze the issue, the authors of the new study wrote that the previous research conclusions were mixed and hard to assess comparatively because they each used significantly different methodologies. Thus, they said, they wanted to introduce a standard methodology to study the issue.

Using data on interstate migration, they isolated rates of migration into several categories of people: 1) All migrants, 2) people aged 25-64 in the labor force, 3) that same group but with a college degree and 4) without a degree, and 5-7) the same divisions in an age group of 25-39 in the labor force.

Isolating the ratio of licensing between states from other variables which could affect migration between the two, the authors concluded that differing license rates between has no effect of migration flows.

In explaining their finding, the authors noted that licensing regimes in many states have become more uniform over time. They also speculated that licensing reciprocity barriers are not significant when compared to the other factors faced by people moving from state to state, like family ties, moving costs, and job opportunities.

"We concluded that licensing has essentially no effect because it is not that important a factor compared with other spatial and locational determinants of migration flows accounted for in our gravity model."

The authors cautioned against standardization interventions based on a supposed link between licensing rates and hindrance of migration. "Specifically, we are concerned about the likely unintended consequences, especially because many occupations are already engaged in rationalizing licensing regimes across states."

*U.S. Court of Appeals, Ninth Circuit*

**Law banning conversion therapy by licensees properly regulates conduct and does not unconstitutionally restrict speech**

*Issue: Constitutional curbs on regulating licensees' scope of practice*

The U.S. Court of Appeals for the Ninth Circuit, in a September 6 decision, upheld a Washington state law banning the use of conversion therapy on minors, holding that any restriction on speech the law effected was incidental to restrictions on properly-regulated conduct and thus permissible (*Tingley v. Ferguson*).

The case was a constitutional challenge to a 2018 Washington State law that banned licensees from subjecting minor patients to conversion therapy, or the attempt to change a person's sexual orientation or gender identity. In 2014, the Ninth Circuit upheld a California law similar to the one Tingley was challenging. The Washington law exempted non-practice speech by licensees and religious counseling.

Tingley is a licensed marriage and family therapist who espouses Christian religious ideals in his work. He filed suit in federal court in May 2021, arguing that the law violates both his and his clients' US Constitutional rights to free speech and free exercise of religion. A district court dismissed the case and Tingley appealed.

Tingley claimed that a 2018 US Supreme Court case, *National Institute of Family & Life Advocates v. Becerra*, voided the Ninth Circuit's earlier California decision *Pickup v. Brown*. In the earlier case, the court had held that the law did not ban protected speech, but only speech incidental to professional conduct, which could properly be restricted.

In *NIFLA*, the 2018 Supreme Court case, the court had abrogated *Pickup*, but only a separate part of that case which held that restrictions on "professional speech"—that which occurs within the confines of a professional relationship—should be categorically subject to lesser scrutiny. That holding did not affect the part of *Pickup* which held that the speech being regulated in conversion therapy was only incidental to properly-regulated professional conduct, and, in fact, even seemed to affirm that holding by noting that some professional speech could be regulated incidental to conduct.

Applying *Pickup* to the current case, the court upheld the challenged law. The Washington legislature had acted rationally in passing the law, considering evidence and the recommendations of professional organizations which indicated that conversion therapy was associated with negative health outcomes and other adverse effects, including a doubling of attempted suicide rates in affected patients.

The court went further in assessing Tingley's claims, holding that, regardless of *Pickup*, the Washington law was constitutional under Supreme Court precedent that allows for lesser scrutiny of restrictions on categories of speech such as the one at issue in the case.

"The Court has repeatedly recognized that there may be categories of speech warranting lesser scrutiny under the First Amendment that, while appearing novel, belong to a 'long (if heretofore unrecognized) tradition' of restriction," wrote Judge Ronald Gould for the court. The court found such a history of restriction of speech incidental to the regulation of healthcare, noting that governments have the authority to regulate what medical practices licensed health care can practice.

Tingley argued that reliance on changing medical attitudes was an inappropriate basis for the restriction of his practice, but the court again disagreed.

"That expert medical organizations have changed their view over time, with additional research, is a good thing. Science, and the medical practices used to treat human conditions, evolve over time . . . That doctors prescribed whiskey in 1922, and thought of homosexuality as a disease in 1962, does not mean that we stop trusting the consensus of the medical community in 2022 or allow the individual desires of patients to overcome the government's power to regulate medical treatments."

Additionally, Judge Gould noted, a finding in Tingley's favor would endanger other limitations on speech by licensed health professionals, such as restrictions on the promotion of ineffective or harmful drugs or false advertising.

"The practice of psychotherapy is not different from the practice of other forms of medicine simply because it uses words to treat ailments . . . What licensed mental health providers do during their appointments with patients for compensation under the authority of a state license is treatment."

"The work that Tingley does is different than a conversation about the weather, even if he claims that all he does is 'sit and talk' . . . The health professions differ from other licensed professions because they *treat* other humans, and their treatment can result in physical and psychological harm to their patients."

Last, the court rejected Tingley's argument that the law unconstitutionally imposed restraints on the free exercise of religion. The restrictions on religious practice in the law were the result of a neutral law that constrained conversion therapy regardless of whether the motivation for seeking it was religious.

"Washington restricted licensed providers from performing conversion therapy on minors because of the demonstrated harm that results from these practices, and not to target the religious exercise of health care providers," Judge Gould wrote.

### ***Health Professions Review Board of Canada***

## **For reciprocity applicant, practice in unregulated jurisdiction does not count**

*Issue: Rules governing reciprocal licensing among jurisdictions*

The Health Professions Review Board of British Columbia, in a September 8 opinion, affirmed a decision by the province's College of Massage Therapists to deny immediate licensure to an applicant who had practiced for most of her career in a jurisdiction where a license was not required.

The review board held that the decision by the College to discount that experience when determining whether she could be licensed in British Columbia was reasonable (*Applicant v. College of Massage Therapists of British Columbia*).

Following graduation, the applicant who filed the appeal began her practicing career in a province that does not regulate massage therapists, working there for four years before moving to British Columbia in 2016. She registered with the college and maintained practicing status intermittently from 2016 to 2018, compiling about eight months' worth of practice in all.

In 2022, the College denied her application for reinstatement—necessary because she had more than two years of inactivity—and informed her that she needed to complete the performance assessment portion of the licensing exam.

The applicant appealed to the BC Health Professions Review board, noting the inconvenience and costliness of having to take the exam, and questioning why she could not obtain licensure through the easier course of completion of continuing education credits.

The Review Board, in a decision by Panel Chair Celia Francis, agreed with the College's decision, holding that the College's determination that continuing education courses would be insufficient to prove the applicant's competence because, despite her four years practicing out of the province, she had only practiced in a jurisdiction that required licensure for less than a year and had spent three years away from practice, was reasonable.

The applicant argued that the length of time of her licensed practice was irrelevant to the College's decision. But the Board, affirming the Registration Committee's decision, wrote that a requirement that applicants who have not practiced for more than two years meet competency requirements through a practical assessment is reasonable to protect the public interest.

While the Registration Committee evaluating her application had credited her four years of practice in the unregulated jurisdiction, it was not unreasonable to discount that experience given that licensure was not required in that province.

## Discipline

### *Texas Court of Appeals, Second District*

#### **Board discipline decisions have full effect while an appeal is pending**

*Issue: Status of discipline action in course of licensee appeal*

A Texas appellate court, in a September 8 decision, overturned a lower court's order that a bail bond board be restrained from enforcing its decision to deny a license renewal while an appeal of that denial was pending. The appellate court held that state regulatory law expressly gives full effect to board decisions during the appeals process (*Tarrant County Bail Bond Board v. Khozindar*).

After the Tarrant County Bail Bond Board, located in Fort Worth, Texas, denied Eric Khozindar's application to renew his license on the grounds that Khozindar's original—now withdrawn—application contained substantial omissions, including previous license suspensions, and because he had improperly certified his later application, Khozindar appealed the denial.

On appeal, he asked for and received a temporary restraining order against the board from a trial court which would allow him to continue working while the final outcome in his case was pending. The court then filed for an interlocutory appeal of that order and the case went up to a state Court of Appeals in Fort Worth.

The board argued that the trial court had improperly issued the restraining order, pointing to a section of Texas regulatory code which gives full effect to board orders during appeals.

The court, in a decision by Justice Wade Birdwell, agreed. The plain language of the state's regulatory code indicates that board orders will remain in effect during an appeal, and so the trial court had no authority to issue an order restraining the board pending the outcome of Khozindar's case.

Although Khozindar had argued that the regulation did not apply to his case because his substantive argument was that the board did not have the authority to require him to provide the information he had omitted from his application, he had actually failed to argue this in his complaint, arguing only that was improperly denying him an opportunity to submit the correct certification for his application, and the appellate court dismissed that argument.

The trial court's order was reversed and the temporary restraining order voided.

***Florida Court of Appeal, First District***

**Revocation overturned over board failure to hold hearing on aggravating factors and imposing of unauthorized punishment**

*Issue: Proper hearing procedure and authorized disciplinary sanctions*

The Florida Court of Appeal, First District, reversed a decision by the state's licensing board to revoke the license of a nurse, on reciprocity grounds, who violated a patient's confidentiality, holding that the board had improperly used the facts of the nurse's case as aggravating factors without providing an evidentiary hearing because reciprocity was the only basis put forward for discipline (*McQueary v. Florida Board of Nursing*). The court also held that revocation was not a potential sanction in the case.

The Louisiana Board of Nursing suspended nurse Kimberley McQueary's license in 2017 for violating patient confidentiality. In 2018, the Florida nursing board filed a reciprocal complaint, eventually revoking McQueary's license, citing a violation of patient confidentiality as an aggravating factor despite having not mentioned the violation in its disciplinary charges.

McQueary appealed, arguing that the board denied her due process rights when it used that violation of patient confidentiality as an aggravating factor without giving her notice of that accusation and an opportunity to defend against it.

McQueary had requested a formal hearing, but, at the Department's suggestion that the facts of McQueary's Louisiana suspension were not in dispute, the administrative law judge in charge of the case gave custody of the case to the board for an informal hearing, with the judge specifically noting that facts additional to the existence of her earlier discipline were not at issue in her disciplinary proceedings, although McQueary was given the opportunity to present mitigating evidence.

Following the hearing, the board revoked McQueary's license on recommendation of the Department, despite the fact that the maximum penalty for reciprocal discipline at the time was the same sanction imposed in the original jurisdiction, which in this case in this case suspension. If McQueary had committed the violation in Florida, the maximum penalty would have been \$500.

The court, disapproving of the decision to use the facts of McQueary's case as aggravating factors to revoke her license, wrote that "The Board and the Department engaged in a game of bait-and-switch. The Department provided no notice to Appellant of its intent to seek revocation, and its communications had the effect of lulling her into complacency. More egregious than this, there was no

alleged violation of [professional conduct] in the amended complaint . . . In essence, though the Board punished Appellant for this uncharged violation."

"The Board cannot purport to use the violation of an entirely separate basis for discipline as an aggravator, and then punish based on that uncharged violation. To allow this approach would be to obviate the due process requirement of notice before depriving a person of a property interest . . . The Department effectively obtained the Board's determination of a violation of one statutory provision, and then sought a penalty under another statutory provision."

In addition, the court noted, the Department had not actually provided any evidence to support its charged aggravating circumstances. "It cannot claim that there are no disputed issues of fact with respect to the complaint, to avoid a presentation of evidence in a formal hearing, advise Appellant that there is nothing to dispute in the amended administrative complaint, and then rely exclusively on those allegations as 'clear and convincing' evidence of an aggravating factor," the court wrote, citing the evidentiary standard for aggravating factors. "The Board's own rule requires a separate evidentiary showing during the penalty phase."

Even if the additional charges had been legitimate, the board had overstepped its sanctioning authority, as revocation was not available as a sanction for McQueary's alleged violation at the time of her actions, and in a case of a first violation where no harm occurred to the patient, her sanction should have been even more limited, to only a fine and citation, the court added. It reversed the board's decision and remanded the case.

*Texas Court of Appeals, Eighth District*

**Revocation upheld where licensee made procedural error at hearing and his own expert witness criticized licensee's recordkeeping**

*Issue: Errors that can defeat a licensee's appeal of disciplinary action*

In an October 26 decision, the Texas Court of Appeals, Eight District, in El Paso, rejected an appeal by a physician from a decision by the Texas Medical Board revoking his license because, among many other reasons, the licensee failed to make his primary argument while on rehearing before the board, and his own expert witness described his recordkeeping as "not good" (*Leonard v. Texas Medical Board*).

After investigating a complaint by a former patient, the board filed a complaint against physician Philip Leonard, claiming he violated sexual boundaries multiple times from 2011 to 2015, prescribed medications to that patient—who was dependent on opiates—for non-medical purposes, and failed to meet guidelines for chronic pain treatment and keeping patient records. In 2018, after a hearing, the board revoked Leonard's license

On appeal, Leonard argued that the board had erred by applying a newer version of its pain management rules—from 2015—rather than the version in place when the violations occurred, which he claimed was less stringent. Unfortunately for Leonard, although his claim had some appearance of plausibility, he had failed to raise the issue when his case was before the board on a motion for rehearing, a fact that led to the dismissal of the majority of his claims.

His mistake doomed two of his other arguments on appeal, in which he claimed that the board improperly claimed jurisdiction over his case by citing a section of the older rules, and argued that an expert witness retained by the board improperly testified to the standards of conduct and care existent under the newer version of the rules and thus her testimony was invalid. Both of those arguments were now invalid. Court of Appeals also held that the administrative

law judge overseeing Leonard's case properly used their discretion to admit the expert's report, regardless of which set of rules the expert was testifying about.

Leonard also challenged the board's conclusions as being based on insufficient evidence, arguing that, among other things, that he had kept a written treatment plan for the patient. Again the court disagreed, noting several findings by the administrative judge showing lapses in his record-keeping that provided the board with reasonable grounds to discipline him.

For instance, Leonard had failed to record the amount of medicine used in injections and failed to document his rationale for changes in the patient's treatment with pain medications, and forgot to document one genital examination entirely. His own witness, in fact, described Leonard's recordkeeping practicing as "not good."

The appellant further argued that the board had presented his records in a different, unorganized format during his hearing, and that the administrative judge had erred by not allowing him to use the original version of the records in his defense. But the court noted that Leonard had failed to provide those records in his preferred form to the prosecution before attempting to introduce them, and thus the judge had acted within her discretionary bounds by rejecting them.

The last argument Leonard tried was that the board acted with impermissible bias. He claimed that a recent board castigation of an administrative judge who later resigned in an unrelated case created an environment where his own hearing could not be fair, and that the board tried to sway the judge by calling him a repeat offender for having been disciplined twice before. After review, the court held that the judge had acted reasonably, and it affirmed Leonard's discipline.

*California Court of Appeals, Third District*

**Credentialing panel lacked authority to ask witnesses to file complaint against licensee**

*Issue: Rules on how investigations of licensees may be initiated*

An investigation initiated by education licensing authorities into school administrators accused of retaliation was halted by an October 19 decision by the California Court of Appeals for the 3rd District. The regulators did not have authority to reach out to witnesses to initiate an investigation and could only start after a complaint had been filed or referred by law enforcement, the court ruled (*Little v. Commission on Teacher Credentialing*).

A committee of the California Commission on Teacher Credentialing initiated a disciplinary investigation of three administrators of the Palm Springs School District in 2019 after a special education teacher named John Villani sued the district in 2016, alleging that the district first ignored and then retaliated against him after he accused a teacher aide of inappropriate sexual attention to students. The teacher aide was later convicted of felony sex offenses.

An investigator contacted both Villani and the administrators in 2019 after the Commission learned about the lawsuit from a news article, seeking evidence for a disciplinary case. Villani provided documents to the investigator, but the administrators objected to the investigator's obtaining of those documents and questioned its jurisdiction to even initiate a disciplinary review, demanding the Committee cease its investigation.

In October 2019, the administrators filed in court for a writ of mandamus ordering the board to halt the investigation. The administrators argued that the regulators had exceeded their jurisdiction by initiating their own investigation based on the news article. A trial court judge agreed with the administrators,

filing an order that prohibited them from proceeding with the investigation based on any records independently obtained from Villani. The regulators appealed.

On appeal, the Commission and Committee first argued that the three administrators' claims could not be heard in court because they had not exhausted their administrative remedies. The court did not agree. Assuming, for the sake of argument, that the exhaustion requirement applied to the administrators' case, the court held that the requirement was excused because the question of the regulators' jurisdiction in this case was "a matter of significant public interest."

California Education Code § 4424.5 authorizes the committee to initiate review upon receipt of "(1) official records from the Department of Justice or any law enforcement agency; (2) an affidavit or declaration signed by a person with personal knowledge of the allegations of misconduct; (3) a statement from an employer that the credential holder has been dismissed, suspended for more than 10 days, or placed on administrative leave due to allegations of misconduct; (4) a notice from an employer that a complaint was filed with the school district alleging misconduct by a credential holder; (5) a notice from a school district, employer, public agency, or testing administrator of specified violations of the Education Code; or (6) an affirmative response on an application question relating to conviction, adverse action, or denial of a license, or a pending investigation."

Under California's regulatory code, the Committee of Credentials is authorized to commence an initial review only upon receipt of certain types of documents. Not listed in the California regulatory code section delineating the records that can instigate an investigation are news articles, such as the one which initiated the Committee investigation of the Palm Spring administrators.

In its defense, the Committee argued that, although it contacted Villani based on the news article, it only initiated an investigation once it received the declaration that it requested Villani provide. Nothing in the Commission's regulations, it argued, prevented it from reaching out to a witness to professional misconduct.

Unfortunately for the regulatory agencies in this case, their rules expressly state that, for purposes of determining the initial question of whether it has jurisdiction to initiate a

disciplinary investigation, the Commission may request records "only from the Department of Justice, a law enforcement agency, a state or federal court, and a licensing agency of this state or a licensing agency of another state."

Thus, the regulatory bodies had stepped outside of their jurisdiction by going directly to a witness in the case before an investigation was formally begun.

Although California's regulatory code allows the board to contact a "complainant," the court held that that term specifically meant a person who filed a declaration with the board against a licensee, something that Villani had not done at the time he was contacted by the agencies. Thus, the board had no authorization to reach out to him.

The court granted the writ of prohibition to the administrators.

### **Supreme Court of Oklahoma**

## **Board has power to issue summary suspension while discipline case pending**

*Issue: Authority to issue summary suspension while discipline challenged*

The Supreme Court of Oklahoma, in an October 4 decision, upheld the ruling of a lower court denying a suspended school superintendent an injunction allowing him to return to his position.

The state's education department did have the authority to issue an emergency suspension of the superintendent's teacher license while his disciplinary case was pending, the court ruled (*Western Heights Independent School District No. 1-41 of Oklahoma County v. State, ex rel. Oklahoma State Department of Education*).

The board wanted the district to appear at a meeting in April 2021, but no one from the district attended and the board placed the district on probation. In response, the district and Barnes, the superintendent, filed in state court for a declaratory judgment and injunctive relief against the board. In June, the board issued an emergency suspension of Barnes's teaching license and position as superintendent, and Barnes and the district challenged that order in July.

The adverse findings by the board against Barnes and the district were extensive. They included: the impairment of the district's child nutrition program to the point that the district ceased providing food to students during the pandemic school closures; noncompliance with fire services protection protocols that resulted in a citation from the local fire department (the majority of one high school's sprinklers were nonfunctional and that had been known about for at least two months); unusually high staff turnover of 37%; a disorganized district payroll to the point that some accounts used to fund employee medical care were in arrears; and a litany of other problems.

In court, Barnes and the district sought injunctions that would allow him to return to his position. They argued that, while the board had the authority to revoke a license after a hearing, it did not have authority to summarily suspend a license pending a formal hearing, and that any suspension of his license was a violation of his rights to due process. A state district court rejected those motions, and Barnes filed an interlocutory appeal.

The appellate court also disagreed with Barnes. Citing Oklahoma case precedent, Justice James Edmondson noted that courts in the state had a history of granting the authority to temporarily suspend a professional licensing pending a revocation hearing.

"A state administrative agency has implied powers in addition to the powers expressly granted when such implied powers are necessary for the due and efficient exercise of the express powers," wrote the justice for the court. "An express statutory power and duty by the State Board to exercise a revoking power concerning a teacher's certificate by the State Board of Education is consistent with an included lesser implied power of suspension by the State Board when exercised in a revocation proceeding."

Because Oklahoma statute granted the board authority to regulate the licenses of school professionals, and because the sections of Oklahoma's regulatory code governing the board granted it the authority to issue summary suspensions, the board's temporary suspension of Barnes's license was valid.

All together, the language of the statutes and rules governing licensure "is consistent with a common-law rule of a lesser implied power of suspension included within a greater power to revoke a license when a revocation proceeding has, or immediately will be, commenced in addition to the suspension," Judge Edmondson wrote.

Barnes also argued that the board had violated his due process rights when it refused to convert the hearing on his summary suspension into a full evidentiary hearing on the merits, claiming that any full hearing occurring after the emergency suspension was an improper post-deprivation hearing.

The court again disagreed. Barnes's emergency suspension did not revoke his certificate or even cease payment of his superintendent salary, and any interests that Barnes had in the non-suspension of his license were outweighed by the state's interests in making sure his school district was properly educating its students and properly maintaining its funds.

And, although Barnes argued that the circumstances cited by the board to issue his summary suspension did not amount to an emergency, the court held that the board had acted within its authority to issue an emergency suspension based on a totality of the circumstances.

*Court of Appeals of Oregon*

**Rejected applicant not eligible to seek contents of investigatory file after giving up on application process**

*Issue: Rights of license applicants to view board's investigation of them*

Only current applicants are potentially entitled to view a board's investigatory records of them, the Court of Appeals of Oregon ruled October 26. The ruling concerned a recent applicant for an Oregon massage therapy license who was seeking to see the contents of the investigatory file which formed the basis for the board's rejection of her application.

Because the applicant had dropped her appeal process, the court said, she was no longer a current applicant (*Wang v. Oregon Board of Massage Therapists*).

In 2019, the board fined massage therapist Minfang Wang for practicing without a license after an investigation. Following that, Wang obtained the required education and training and applied for a license, but the board denied her application, citing the 2019 investigation.

Wang requested a hearing, but withdrew that request after being advised that the costs of an appeal would be \$15,000 to \$25,000. She filed a public records request to obtain the results of the 2019 investigation, but the board denied it, citing confidentiality. She then filed suit against the board, seeking to see her investigative file and to have her case re-opened.

Oregon statutory law requires the board to provide the contents of investigatory files to health professionals whom it is seeking to discipline, including applicants.

Unfortunately for Wang, the court held that the disclosure requirement only applies to people who have active applications open with the board. Because Wang had discontinued her application proceedings after learning her hearing would cost approximately \$20,000, she was no longer an applicant and the court ruled she had no right to view the file.

"The statute prioritizes maintaining confidentiality," wrote Judge Jackie Kamins. "The disclosure requirement is thus a limited exception to the general rule of confidentiality that exists to allow current applicants or licensees to prepare for disciplinary hearings that affect them. As it is written, the statute reflects a legislative intent to prohibit access to the board's investigative documents to all but current applicants and licenses."

The appellate court did hold that the trial court had erred in one aspect: Because Wang's claim to see her investigatory results was denied by the board, the trial court had actually been hearing an appeal of that board order, not an independent legal claim. Thus, the trial court, instead of denying Wang's claim, should have just affirmed the order of the board denying Wang the file.

***Massachusetts Supreme Judicial Court***

**Proving deceptive professional conduct does not require establishing common law elements of fraud**

*Issue: Elements required to prove disciplinable offenses*

A Massachusetts court, in a September 7 decision, rejected the appeal of a physician who had been disciplined for deceptive conduct and false advertising, holding that the state's Board of Registration in Medicine was not required to prove the common law elements of fraud in order to discipline the licensee (*Welter v. Board of Registration in Medicine*).

The licensee in the case, Ryan Welter, founded a business called New England Center for Hair Restoration. In 2011, he hired a man named Clark Tan, who was licensed in the Philippines but not in the United States, and to whom he decided to delegate work as a non-licensed assistant after consulting with the Massachusetts Medical Society.

Despite that non-licensed status, during Tan's employment, the website for the Center identified Tan as a doctor and additionally identified Welter as board certified in a way that obfuscated that his certification was in family medicine, not hair restoration. Tan also identified himself in person as a doctor, and distributed business cards to that affect. During his employment with Welter, Tan performed the clinic's initial consultations that stated they were completed by a doctor.

In 2016, two patients filed complaints to the board after learning that Tan was not licensed. The board initiated disciplinary proceedings, and an administrative judge found that the board had proved that Welter engaged in false advertising and deceptive conduct. The board placed him on probation, and Welter appealed.

On appeal, Welter argued that the board violated his right to due process by issuing his disciplinary sanction without finding that his actions had met the common law definition of fraud. That would have meant proving that he had intended to deceive and that his patients had relied on his misleading statements to their detriment. Welter argued that suspending his license without that finding did nothing to protect public health.

The court did not agree. Citing U.S. Supreme Court precedent on the regulation of attorneys, Justice Dalila Arguez Wendlandt wrote that doctors can be held to a higher standard of truthfulness in advertising than others because consumers without sophistication in the medical profession were at risk of deception.

"Thus, the board may, consistent with due process, place the burden on physicians to ensure that their advertising not only is technically accurate, but also is not deceptive or misleading; similarly, the board may demand that physicians conduct themselves in a manner that does not have the capacity to deceive or defraud without offending the State or Federal Constitution."

Welter also argued that the failure to require a finding of common law fraud was a violation of the board's regulations. However, Justice Wendlandt again rejected his claim, noting that the board's regulations do not require proof of fraud, only advertising that is objectively "false, deceptive, or misleading" and not reliant on subjective findings that a physician intended to deceive or that patients relied on false information.

Last, Welter argued that his website had not actually been inaccurate, noting, in particular, that Tan was a doctor in the Philippines and that he was board certified. Again, the court disagreed. Affirming Welter's discipline, it held that

prospective patients could be deceived by the website into thinking that Tan was licensed in the United States and that Welter was specifically certified in hair restoration.

*Court of Appeals of Kansas*

**Admissions from unrelated case cannot be used in board action against man practicing without a license**

*Issue: Use of admissions of fact from unrelated court cases in disciplinary proceedings*

A self-styled "pathologist assistant" who performed unlicensed autopsies cannot substitute discovery from another case for a proceeding before the board for unlicensed practice of autopsies, the Court of Appeals of

Kansas held October 28 (*State v. Parcels*).

In 2019, the state charged Shawn Parcels with unlicensed practice of medicine and the board followed with its own case seeking to enjoin Parcels from practicing. Parcels, who never attended medical school, had also not obtained licenses to practice medicine as a physician, required for performing autopsies in Kansas.

Despite that lack of licensure, he began independently performing autopsies, making medical diagnoses, and holding himself out as a medical professional, including the use of "PA" after his name, which he claimed meant "Pathology Assistant" and not "physician assistant."

Parcels never responded to the board's discovery requests, even after two reminders sent after the 30-day response period offering to provide more time. He ignored a further deadline imposed by a court, and the board filed for summary judgment.

After several delays, the court granted him additional time, warning him that it would not tolerate any further delays. Parcels responded, but never provided discovery, instead asking the court to take notice from discovery he had provided in a consumer protection case which involved many of the same facts. Eventually, the court granted summary judgment for the board, prohibiting Parcels from performing autopsies.

Parcels appealed, arguing that the court erred when it did not accept his suggestion to take notice of the discovery and record from his consumer protection case.

Reviewing that case record, the court noted that the evidence in the consumer protection case was relevant. However, under Kansas law, requests for admission in the discovery process can only be used in the pending action for which the requests were issued. "Thus, Parcels endeavored to have the district court act in contravention of that provision when he extracted discovery responses from one case and argued for their implementation in a separate legal action purely by fiat," the court wrote.

"The Board's case is distinct in fact, law, and jurisdiction from the other matters in which Parcels was embroiled. Thus, the use of the discovery evidence at issue is limited to the consumer protection action in which it was submitted. To hold otherwise would violate the Kansas Rules of Civil Procedure."

The court also noted that admissions in a different case do not count as admissions in a case at hand; Parcels could still litigate the meaning of his statements in the context of the other case after the board's attorneys relied on them.

Addressing Parcels's challenge to the sufficiency of the evidence in his case, the court noted that Parcels, without question, conducted autopsies without a medical license in violation of Kansas law, and was the registered agent for several organizations with names like "National Tissue and Autopsy Recovery Services." Thus, no question of fact existed in the case, the court said in affirming the board's decision.

Regarding Parcels's use of "PA" to indicate that he was a "Pathology Assistant," in support of which he claimed to have provided enough evidence to merit a factfinding, the court noted that any education and experience he had were irrelevant to whether he violated Kansas law by using an abbreviation for "physician's assistant" after his name without the appropriate license.

### *Court of Appeals for Saskatchewan*

## **Licensee claims of malicious prosecution not dismissible as frivolous**

*Issue: Allegedly scandalous, frivolous, or vexatious claims in licensee appeals*

The Court of Appeal for Saskatchewan, in a September 1 decision, overturned the dismissal of a case filed against the professional medical association in that province (*Solgi v. College of Physicians and Surgeons of Saskatchewan*).

In 2015, physician Ali Solgi entered the Saskatchewan International Physician Practice Assessment Program, created to grant licensure pathways to foreign medical professionals. He was granted a provisional license which allowed him to practice under supervision of another physician licensee approved by the College. The program commenced a final assessment of Solgi in 2019.

After this, the College learned that Solgi might have been practicing without supervision and sent inquiries to him to that effect. Solgi informed them that he was in British Columbia, working under a provisional license that also required him to practice under supervision.

Because any doctor he had been working under in British Columbia had not been approved by the College, the College suspended his provisional license. Solgi appealed, but the College dismissed his case, and he filed suit in court, accusing the College of intentionally harming him and seeking reinstatement. A trial judge dismissed his case and Solgi appealed the dismissal.

The judge hearing Solgi's case had dismissed the matter after concluding, among other things, that Solgi's allegations against the College and its registrar, Karen Shaw, were "scandalous, frivolous and/or vexatious," writing that Solgi had made false allegations of bad faith and malicious actions against the regulatory defendants.

The Court of Appeals disagreed. "Not every pleading that impugns a party or makes degrading charges or allegations of misconduct or bad faith is scandalous," wrote Justice Robert Leurer.

"Were it so, it would mean that a party could never plead a cause of actions that depended on the existence of such conduct. The important qualification to the idea that a pleading that alleges one of these things is scandalous is that nothing is scandalous which is material. Said another way, it is only an *immaterial* allegation that can be scandalous."

"The allegations that the [lower court] judge found to be scandalous were necessary to make out the cause of action based on abuse of public office. This fact, coupled with the . . . judge's conclusion that the statement of claim asserts a

reasonable cause of action based on that tort, means that the statement of claim cannot be struck as scandalous."

The lower court had also found Solgi's claim frivolous, on the grounds that the regulatory defendants were only carrying out their duties under the rules governing the College. The Court of Appeal again disagreed. Solgi had alleged that the College was seeking to harm him using their official power, and the fact that they were acting within the boundaries of their regulatory duties was not a defense to that claim, Judge Leurer wrote.

Last, the lower court judge found that Solgi had failed to pursue the proper means of remedy through administrative appeals, holding that his suit was an improper collateral attack on the College's decision.

Once again, the court disagreed. "To discern the line dividing a case involving a collateral attack and one involving a permissible civil claim, a court must characterize the essential character or nature of the claim," wrote the judge.

"If it is an attempt to invalidate the administrative order, then the litigant must proceed through the appeal avenues provided by the applicable administrative scheme or by judicial review. If the essential nature of the claim is not one designed to invalidate the administrative order, but instead seeks damages for the harm that order has caused the plaintiff, it should generally be allowed to proceed."

Although the lower court judge ultimately held that Solgi was attempting to circumvent the College's appeal process, that judge had earlier determined that Solgi was pursuing a claim of abuse of public office.

"In that respect, the essential character of his claim was *not* an attempt to relitigate the licensing decision, but rather an attempt to obtain a judgment for the damages alleged to have been caused by that decision." Although Solgi had asked for the reinstatement of his license, that claim could be struck from the remainder.

The court struck Solgi's request for the reinstatement of his license and returned the case to the lower court for further proceedings.

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