



**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

*Office of the State Forester
Office of the State Entomologist
State Soil and Water Conservation Board
Texas Department on Aging
Texas Commission for the Deaf
Texas Advisory Board of Occupational Therapy*

**A Staff Report
to the
Sunset Advisory Commission**

1984

TEXAS ADVISORY BOARD OF OCCUPATIONAL THERAPY

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SUMMARY

The Texas Advisory Board of Occupational Therapy was established in 1983 to regulate the practice of occupational therapy through a licensing program. Functions of the board include: 1) establishing rules and regulations for licensure and enforcement; 2) receiving and investigating complaints; 3) approving a licensure examination; and 4) issuing and renewing licenses of qualified applicants.

To assess the need to license occupational therapists, the review focused on the scope of practice, the potential for harm, the evidence of other means of protecting the public, and the protection under the current Act. The results of the review indicated a continuing need to regulate occupational therapists based primarily on the potential for harm to the public which could result from unqualified individuals practicing occupational therapy. Although there is a well established private registration program for occupational therapists sponsored by the American Occupational Therapy Association which could assist the public in identifying qualified practitioners in the absence of licensing; without a state licensing act there is no way to prevent unqualified and untrained individuals from establishing an independent practice as an occupational therapist and to ensure that those therapists working with patients with medical problems will be referred and supervised by a physician.

The results of the review indicated that while the agency generally operates in an efficient and effective manner, there are changes that should be made in the event the legislature decides to continue the agency. An analysis of alternatives to the current operations indicated that one alternative does exist where potential benefits outweigh disadvantages. In addition, one issue was identified which offers both major changes in state policy as well as major advantages and disadvantages.

The changes which should be made if the agency is continued and a discussion of the alternative and policy issue identified are set out below.

I. MAINTAIN THE AGENCY WITH MODIFICATIONS

A. Policy-making Structure

- 1. The statute should be amended to require that the Occupational Therapy Board appoint the agency's executive director with the consent of the commissioner of the Texas Rehabilitation Commission.**

There is a potential for conflict in the current organizational structure because the executive director is responsible not only to the board but also to the commissioner of TRC who has the authority to hire and fire the executive director.

- 2. The statute should be amended to require the board to consider the policies and procedures of TRC when adopting rules and regulations.**

Currently the Rehabilitation Commission has no legal or statutory input into decisions which could affect its operations. There is informal input but it should be made statutory.

- 3. The statute should be amended to require geographical distribution in appointments to the board.**

The current composition of the board does not reflect a proper balance of interests impacted by the agency's activities since approximately half of the board is from the Central Texas area.

B. Overall Administration

- 1. The statute should be amended to require the board to contract for administrative services with the Texas Rehabilitation Commission.**

Although the current Act requires the TRC commissioner to appoint the board's executive director and TRC is directed to handle the board's appropriations, the statute does not require the board to contract with TRC for other administrative services.

- 2. The statute should be amended to prohibit the appropriations of general revenue funds to fund the board's operations.**

Unlike most licensing agencies, general revenue funds could be appropriated to the board because the statute does not specifically require that the agency's appropriations be supported solely from fee revenues.

C. Evaluation of Programs

1. The statute should be amended to authorize additional fees in connection with the licensing of occupational therapists.

There are no fees authorized for a number of services that will be required in the enforcement of the Act including collection of bad checks, issuance of duplicate licenses, and transfer of records.

2. The statute should be amended to provide for an inactive licensee status.

Currently, an occupational therapist who is not actively practicing must either continue to renew their licenses annually or let the license expire and reapply for a new license if they choose to reenter practice.

3. The statute should be amended to require inactive licensees who resume active licensee status to meet educational or other requirements established by the board.

This recommendation would ensure that licensees who have not practiced for an extended period of time have not lost contact with developments in technology and practice.

4. The statute should be amended to permit only recent graduates of U.S. programs to apply for a temporary license as an occupational therapist or occupational therapy assistant.

The current Act allows the board to issue temporary permits to 1) graduates of recognized programs both in the U.S. and abroad prior to taking the licensing examination; and 2) applicants seeking licensure by endorsement. It was determined that issuing a temporary permit to applicants seeking licensure by endorsement was unnecessarily duplicative. The review also indicated that, based on the significantly poorer pass/fail rates of graduates of foreign programs and applicants who had previously failed the exam, issuing temporary permits to these

individuals does not provide sufficient protection to the general public from unqualified practitioners.

5. **The statute should be amended to require temporary permittees to practice only under the supervision of a licensed occupational therapist.**

There are currently no statutory provisions concerning the supervision of temporary licensees who are granted the same rights and privileges of licensed occupational therapists without having met all of the licensure requirements.

II. ALTERNATIVES

1. **The board could be abolished and the regulation of occupational therapists transferred to an independent agency which will regulate both occupational and physical therapists.**

Currently, physical therapists in Texas are regulated by an independent board while occupational therapists are regulated by a board administratively attached to the Texas Rehabilitation Commission. Under the proposed alternative, the regulation of both physical therapists and occupational therapists would be administered by an independent agency governed by a board consisting of representatives of physical therapy, occupational therapy, and the general public. Since both agencies regulate relatively small populations, one of the primary benefits of this approach would be a reduction in costs estimated to be about \$80,000 annually. This combination should also result in more consistent regulation of closely related professions serving similar populations. Many physical therapy and occupational therapy programs are located in close proximity to one another and students sometimes share the same class instruction. Once in practice, physical therapists and occupational therapists often work together closely, treating many of the same patients, particularly in rehabilitation settings. In addition, physical therapists and occupational therapists often belong to the same professional associations and attend the same continuing education programs.

III. OTHER POLICY ISSUES

1. **Should the Occupational Therapy Board be abolished and the regulation of occupational therapists be discontinued.**

The results of the review indicated that many occupational therapists are under the general supervision and employment qualifications of hospitals, school districts and other governmental or institutional health care settings. There is, however, a greater need to control the services provided by occupational therapists in private practice. There is a well-established private registration program for occupational therapists sponsored by the American Occupational Therapy Association (AOTA) which could assist the public in identifying qualified practitioners in the absence of licensing. Without a state licensing act, there is no way to prevent unqualified and untrained individuals from holding themselves out to be occupational therapists, to effectively discipline and regulate practicing occupational therapists, and to ensure that those therapists working with patients with medical problems will be referred and supervised by a physician.

AGENCY EVALUATION

The review of the current operations of an agency is based on several criteria contained in the Sunset Act. The analysis made under these criteria is intended to give answers to the following basic questions:

1. Does the policy-making structure of the agency fairly reflect the interests served by the agency?
 2. Does the agency operate efficiently?
 3. Has the agency been effective in meeting its statutory requirements?
 4. Do the agency's programs overlap or duplicate programs of other agencies to a degree that presents serious problems?
 5. Is the agency carrying out only those programs authorized by the legislature?
 6. If the agency is abolished, could the state reasonably expect federal intervention or a substantial loss of federal funds?
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BACKGROUND

Organization and Objectives

The Texas Advisory Board of Occupational Therapy was created by the Texas Occupational Therapy Act (S.B. 1213, 68th Legislature) to regulate the practice of occupational therapy in Texas. The effective date of the Act was September 1, 1983, and following initial board appointments the first meeting was held on November 7, 1983.

The Act specifies the appointment of a six-member board composed of three occupational therapists, one occupational therapy assistant, and two representatives of the general public. Board members are appointed by the governor and, except for initial appointees, serve staggered terms of six years. As of February 14, 1984, the governor has appointed five of the six board members. One public member position remains open. The board has three principal functions: 1) adopt rules and regulations to enforce the Texas Occupational Therapy Act; 2) receive and investigate complaints; and 3) examine, license and renew the licenses of qualified applicants.

The occupational therapy board is best described as an independent board administratively attached to the Texas Rehabilitation Commission (TRC). Although the board has the basic licensing and enforcement responsibilities associated with other independent occupational licensing boards, the TRC commissioner is statutorily required to appoint the board's executive director with board advice and TRC is statutorily directed to handle the board's appropriations. The board has also contracted with TRC for rental space and other administrative support services. General guidelines and procedures regarding the relationship between the board and TRC are contained in a memorandum of agreement, signed by both parties during an initial board meeting.

Board operations will be supported from fee income received by TRC and deposited to a special fund in the state treasury. Texas Rehabilitation Commission budget staff has estimated board expenditures for a ten-month period ending August 31, 1984 to be \$126,000. The board is authorized 2.5 FTE employees and is currently staffed by an executive director, and one secretarial assistant.

Regulation of occupational therapists in Texas takes the general form used by the other 21 states that have this type of regulation. Basically, there are two levels of licensure; licensure as an occupational therapist, or licensure as an occupational therapy assistant. To qualify for licensure as an occupational

therapist, a person must have: 1) a baccalaureate degree in occupational therapy or evidence of completion of required undergraduate courses if the degree is not in occupational therapy; and 2) a minimum of six months supervised field work. Occupational therapy assistants are trained in the professional methods of therapy and practice, but they do not have the training to evaluate or plan treatment programs without the supervision of an occupational therapist. To qualify for licensure as a occupational therapy assistant, a person must have 1) an associate degree in occupational therapy or an occupational therapy assistant certificate, and 2) a minimum of two months supervised field work. In addition to meeting education requirements, both occupational therapists and occupational therapy assistants must also pass an examination approved by the board.

The board will use the American Occupational Therapy Association (AOTA) certification examination for occupational therapists and occupational therapy assistants. The exams given by the national association are developed and administered by the Psychological Testing Corporation of America with assistance from AOTA. The standardized, multiple choice exams are administered to both occupational therapists and occupational therapy assistants twice a year in San Antonio, Dallas, and Houston.

Regarding procedures established for licensure in Texas, once education, experience, and exam requirements are met, upon payment of a fee and approval of the board, a license will be issued and renewed on an annual basis. A grandfather period ending March 1, 1984 allows the board to waive examination requirements for therapists and assistants already certified or registered on the national level of AOTA. Texas currently has approximately 1,400 occupational therapists and 300 occupational therapy assistants who have met the criteria for AOTA registration. The majority of this number will be grandfathered in by the March 1 date.

The board will rely on complaints from licensees and other members of the general public to identify violations of the Act. As of February 14, 1984, the review indicated the board has received four complaints, which are currently under investigation.

REVIEW OF OPERATIONS

This section covers the evaluation of current agency operations undertaken to identify any major changes which should be made to improve the efficiency and effectiveness of those operations if the agency is to be continued. The evaluation is divided into three general areas dealing with: 1) a review and analysis of the policy-making body; and 2) a review and analysis of the overall administration of the agency; and 3) a review and analysis of the operation of specific agency programs.

Policy-making Structure

The evaluation of the policy-making structure was designed to determine if the current statutory structure contains provisions that ensure adequate executive and legislative control over the organization of the body; competency of members to perform required duties; proper balance of interests within the composition; and effective means for selection and removal of members.

The Texas Advisory Board of Occupational Therapy (TABOT) is set up as an independent board administratively attached to the Texas Rehabilitation Commission (TRC). TABOT is composed of six members appointed by the governor for staggered terms of six years. The statute directs that three members of the board be occupational therapists, that one member be an occupational therapy assistant, and that two members be representatives of the general public.

The review of the board structure indicated that it was generally adequate for this type of regulation. However several areas were identified where changes should be made to improve its overall focus. These are discussed below.

The relationship of the advisory board to TRC should be modified.

The Occupational Therapy Act sets up TABOT as "advisory" and states that ..."the board is created as part of the Texas Rehabilitation Commission and shall perform its duties as a board with the commission." However, the only statutory requirements concerning this relationship are that the commissioner of the Texas Rehabilitation Commission (TRC) appoint the board's executive director with the advice of the board and that TRC administer the agency's appropriations. In all other regulatory matters such as promulgating rules and regulations, setting fees, licensing applicants, and enforcing violations of the Act, S.B. 1213 authorizes the advisory board to act as the sole policy-making body.

The objective of the review of the relationship between TABOT and TRC was to determine if there was an appropriate organizational framework in place which would permit TABOT to get the full benefits of being administratively attached to TRC without undue hardship or difficulty to either agency. In reviewing several other instances where independent agencies are administratively attached to a larger agency, three areas were identified where there is a potential for conflict between the needs of the two agencies: appointment of the executive director and other personnel, rule-making authority, and the provision of administrative support. The administrative relationship between TABOT and TRC was examined to determine 1) how clear-cut the lines of authority and responsibility were; 2) whether there was at least a minimum structure for the two agencies to coordinate and communicate effectively; and 3) whether the relationship is structured so that both parties have input into decisions which can affect both agencies.

The results of the review indicated that there are two potential problems with the current relationship between TRC and TABOT. First, the lines of authority and responsibility between TABOT and the executive director of the agency are not clear. The executive director is responsible not only to the board but also to the commissioner of TRC who, with the advice of the board, has the authority to hire and fire the executive director. TABOT is not only an independent agency but also a department within TRC with the executive director responsible for many of the duties and obligations of other department heads within TRC. Amending the statute to require that the board appoint the executive director with the consent of the commissioner of TRC would clarify the relationship between the board and the agency's executive director while ensuring that the commissioner would have significant input into a decision which could affect TRC's operations.

The second area of concern identified involved the adoption of rules by TABOT. TABOT is currently statutorily authorized to act independently of TRC in the adoption of all rules to administer the Act. Since TRC is closely tied to TABOT, both by statute and by contract, it is unrealistic to assume that the adoption of rules would not have some potential impact on the operations of TRC. The two agencies currently cooperate informally in this area. Amending the statute to require TABOT to consider the policies and procedures of TRC when adopting rules and regulations would ensure greater input by TRC in decisions which could affect its operations.

Board composition should reflect geographic distribution of the licensees.

TABOT's current composition consists of two public members, one of which has not been appointed at this time, one occupational therapy assistant, and three occupational therapists. The review indicated that while the board's professional membership reflects a proper balance of representation among the different areas of occupational therapy practice, a similar balance is not reflected in geographical distribution of the members. Of the five board members already appointed, one is from San Antonio, one is from Austin, one is from Mart near Waco, one is from Abilene and one is from Houston. Since approximately half the board is from the Central Texas area, and occupational therapists are located in many other regions of the state, regional interests are not appropriately represented. Since the structure of a policy-making body should ensure that the composition represents a proper balance of interests impacted by the agency's activities, the review determined that a better balance could be achieved by amending the statute to require that geographical distribution be considered in appointments to the board.

Overall Administration

The evaluation of the overall agency administration was designed to determine whether the management policies and procedures, the monitoring of management practices and the reporting requirements of the agency were consistent with the general practices used for internal management of time, personnel, and funds.

TABOT should be required to contract for administrative services with TRC.

The Occupational Therapy Board was established by statute as an independent board administratively attached to the Texas Rehabilitation Commission. Although the Act requires the TRC commissioner to appoint the board's executive director with advice of the board, and TRC is directed to handle the board's appropriations, the statute does not require the board to contract with TRC for any other administrative services. While the current board has chosen to contract with TRC for space, computer services, office materials, employees and other needed administrative services, there is nothing to prevent the board from contracting with any other agency or private vendor for these services.

One of the main advantages of attaching a small regulatory agency to a larger agency is the potential for achieving more efficient operations. The results

of earlier sunset reviews on a number of smaller licensing agencies in Texas indicate that in agencies with less than 5,000 licensees the costs per license is substantially higher than in larger agencies primarily because they cannot take advantage of decreased administrative costs and increased economies of scale resulting from the routinization of work. In order to ensure that TABOT will continue to maximize the potential cost savings available through the current relationship to TRC, the statute should be amended to require the board to contract with the Rehabilitation Commission for necessary facilities and other support services required to administer the Act.

TABOT should be prohibited from using General Revenue Funds.

The Occupational Therapy Act specifies that fees generated from the board's licensure program will be deposited to a special fund known as the Occupational Therapy Licensing Fund. The review showed that unlike most licensing agencies, general revenue funds could be appropriated to TABOT because the statute does not specifically require the agency to be financially self-sufficient. As a general state policy, the total cost of licensing agencies which regulate professions or businesses are supported solely from fees received from the beneficiaries of the service provided. In order to ensure that the funding structure of the board is consistent with this policy, the statute should be amended to require the agency's operations to be funded only from revenues deposited to the Occupational Therapy Licensing Fund.

Evaluation of Programs

The Texas Advisory Board of Occupational Therapy regulates the practice of occupational therapy in Texas through a single licensing program. The general objective of this program is to ensure that a minimum standard of competency has been achieved by persons authorized to practice occupational therapy. Since the board has only been authorized since September, 1983, the review focused on the statutory provisions of the Act and the board's proposed rules and procedures for licensure. Major areas of concern resulting from the evaluation are set out below.

Additional fees should be authorized.

Section 5 of the Occupational Therapy Act authorizes the board to set the following fees: an application for licensure fee, an initial license fee, a renewal license fee, a late renewal fee, an endorsement license fee and a temporary license fee. A comparison of the types of services provided by the board and the fees

listed in the statute indicated that there are no fees authorized for a number of services that will be provided licensees including issuance of new licenses due to change of name, collection of bad checks, issuance of duplicate licenses, and transfer of records. Since it is anticipated that a considerable amount of staff time and effort could be involved in providing these services, authorizing a reasonable charge related to the cost of these services would allow the board to recover the expenses from the individual benefited rather than having to pass the costs along to all licensees through the annual renewal fee.

The board should provide an inactive license status.

Under the current Occupational Therapy Act, an occupational therapist who is not actually practicing must either continue to renew their license annually or let the license expire and reapply for a new license if they choose to reenter practice. Surveys of occupational therapists indicate that the population of occupational therapy licensees is similar to that of nurses and vocational nurses in that a number of these individuals may choose to interrupt their practice for extended periods during their careers and later reenter active employment when factors such as family responsibilities, working conditions or wages change. Three effects which may result from this phenomenon include the following: 1) licensee files are maintained as active in the agency resulting in an overstatement of the practicing population and in extra file maintenance costs; 2) the licensee must annually renew the license at a cost to both the agency and the licensee; and 3) the licensee loses contact with developments in technology and practice. Regulatory practices of both registered nurses and vocational nurses provide for an inactive status to eliminate these problems. Amending the statute to provide an "inactive" status for occupational therapy licensees who wish to discontinue practicing for a period of time will reduce costs to both the licensee and the agency. Under this recommendation, licensees who chose this option would also be required to meet educational or other requirements established by the board upon resuming active licensee status in order to provide greater protection to the public by ensuring continued competency.

The issuance of temporary permits should be restricted.

The Texas Occupational Therapy Board is required by statute to issue temporary permits to the following individuals: 1) graduates of recognized

programs both in the United States and abroad, prior to taking the licensing examination; and 2) applicants seeking licensure by endorsement. In the case of a candidate waiting to take the examination, the temporary licenses are valid until the board considers examination results and processes the regular license as appropriate; however, additional temporary licenses may be issued at the discretion of the board if a licensee fails the exam. Individuals who are waiting to be licensed by endorsement will be issued temporary licenses pending processing of a permanent application. The temporary license will expire one month from the date of issuance. Individuals who are issued temporary licenses in both of these instances are permitted to practice occupational therapy with the same rights and privileges and under the same conditions as an occupational therapist who has been licensed by the board.

To be consistent with the intent of a practice act and to ensure a greater degree of protection to the public, the use of temporary licenses should be limited to those instances where they are absolutely necessary and where protection to the general public is not substantially impaired. Applying this standard to occupational therapist regulation resulted in the following conclusions.

The review indicated that temporary licenses issued to applicants who are applying for licensure by endorsement was unnecessarily duplicative since a permanent license will be issued within one month. Amending the statute to eliminate the need to issue both a temporary license and a permanent license to these individuals will reduce costs to both the applicant and the agency.

The current practice relating to issuance of temporary permits to graduates of accredited occupational therapy programs should be changed in two ways. Based on the significantly poorer performance (Exhibit 1) on the licensing examination by candidates who are graduates of foreign programs and graduates of U.S. programs who are retaking the examination, no temporary licenses should be granted to foreign trained graduates and graduates of U.S. programs should be issued only one temporary license which is good until the next examination results are received by the board.

Finally, since the holders of temporary licenses are granted the same rights and privileges of licensed occupational therapists without having met all of the licensure requirements, the statute should be amended to require temporary permittees to practice under the supervision of a licensed occupational therapist.

EVALUATION OF OTHER SUNSET CRITERIA

The review of the agency's efforts to comply with overall state policies concerning the manner in which the public is able to participate in the decisions of the agency and whether the agency is fair and impartial in dealing with its employees and the general public is based on criteria contained in the Sunset Act.

The analysis made under these criteria is intended to give answers to the following questions:

1. Does the agency have and use reasonable procedures to inform the public of its activities?
 2. Has the agency complied with applicable requirements of both state and federal law concerning equal employment and the rights and privacy of individuals?
 3. Has the agency and its officers complied with the regulations regarding conflict of interest?
 4. Has the agency complied with the provisions of the Open Meetings and Open Records Act?
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EVALUATION OF OTHER SUNSET CRITERIA

This section covers the evaluation of the agency's efforts in applying those general practices that have been developed to comply with the general state policies which ensure: 1) the awareness and understanding necessary to have effective participation by all persons affected by the activities of the agency; and 2) that agency personnel are fair and impartial in their dealings with persons affected by the agency and that the agency deals with its employees in a fair and impartial manner.

Open Meetings/Open Records

Since its creation in 1983, the Texas Advisory Board of Occupational Therapy has met as a board on five occasions. Review of the board's compliance thus far with the Open Meetings Act indicates that the board has made timely filings with the Secretary of State's Texas Register Division providing appropriate notice of its meetings. No problems were encountered during the review concerning these meetings and the board appears to be in overall compliance with the Open Meetings Act. Review of the agency's overall compliance with the Open Records Act indicates that the agency has never had a formal request for information and appropriately considers information it maintains as open and available to the public.

EEOC/Privacy

A review was made to determine the extent of compliance with applicable provisions of both state and federal statutes concerning affirmative action and the rights and privacy of individual employees. The personnel responsible for the day-to-day regulatory activity of the board are considered employees of the Texas Rehabilitation Commission. The commission has an affirmative action plan and has policies laid out in their personnel manual relating to the rights and privacy of the individual employees. No problems were apparent in these areas.

Public Participation

The board's policies and activities were examined to determine if the general public and those affected by the board have been informed of its activities. The results of the review indicate that adequate efforts have been made in this area. The board has mailed letters informing Texas hospitals, rehabilitation centers, health care agencies, school districts, and other facilities which employ occupational therapists of the board's establishment and regulatory functions. With the

assistance of the Rehabilitation Commission, information has also been mailed to 400 consumer councils throughout the state. In addition, agency staff and board members have held public forums in different geographical regions to answer any initial questions from the public about the board and its operations.

Conflicts of Interest

The review focused on the board members' compliance with statutory standards of conduct and conflict-of-interest provisions. The conflict-of-interest statute (Article 6252-9b) requires that board members disclose any substantial interest in a business entity regulated by a state agency. These statements are to be filed with the Office of the Secretary of State. New employees and board members are provided copies of necessary statutes and requested to read them. The review also indicated that all required disclosure affidavits have been filed with the Secretary of State.

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ALTERNATIVES

The analysis of whether there are practical alternatives to either the functions or the organizational structure are based on criteria contained in the Sunset Act.

The analysis of alternatives is directed toward the answers to the following questions:

1. Are there other suitable ways to perform the functions which are less restrictive or which can deliver the same type of service?
 2. Are there other practical organizational approaches available through consolidation or reorganization?
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ALTERNATIVES

As part of the review of this agency, the functions performed by the agency were evaluated to determine if alternatives to current practices were available. State agencies with functions similar to those performed by this agency were reviewed to determine if they had developed alternative practices which offered substantial benefits and which could be implemented in a practical fashion. In addition, the practices of other states were reviewed in a like fashion and it was determined that their practices were similar to those of Texas. It was concluded that a practical alternative to the current structure does exist, and it is discussed below.

The board could be abolished and the regulation of occupational therapists be transferred to an independent agency which would regulate both occupational therapists and physical therapists.

A review of organizational alternatives used in other states to regulate occupational therapists identified the Texas Board of Physical Therapy Examiners as a board with similar functions and closely related licensee populations. The Physical Therapy Board, established in 1971, is currently organized as an independent agency with responsibility for the examination, licensing and regulation of 4,200 physical therapists and physical therapy assistants.

To assess the advantages and disadvantages of this organizational alternative, the review sought to determine if consolidation of these two boards would provide any of the following benefits: 1) more consistent regulation; 2) reduction in the costs of administration; 3) improved utilization of existing personnel, equipment, supplies and office space; 4) access to a greater range of services and level of expertise; or 5) increased accountability. The review indicated that the primary benefit that could result from the combination of the two boards would be economic. As indicated earlier in this report, the cost per licensee is substantially higher in agencies with less than 5,000 licensees primarily because they cannot take advantage of increased economies of scale resulting from a reduction in administrative costs and the routinization of work. Depending on the degree of consolidation, the cost savings that would result from a combination of these two boards is estimated to be as much as \$80,000 annually. This savings would reduce the current budgeted expenditures of these two agencies by one-third. This savings

would be shared by both physical therapists and occupational therapists since the combination would result in two, relatively small boards being combined into a more efficient single agency.

The review also determined that because of the similarities between the professions there would be greater opportunities for more consistent regulation and greater coordination between closely related licensee populations. Many physical therapy and occupational therapy programs are located in close proximity to one another and students sometimes share the same academic requirements and class instruction. Once in practice physical therapists and occupational therapists often work together closely, treating many of the same patients, particularly in rehabilitation settings. In addition, physical therapists and occupational therapists may belong to the same professional associations and attend the same continuing education programs.

In evaluating this alternative, representatives of the Physical Therapy Board, the Occupational Therapy Board, the Texas Rehabilitation Commission, the Texas Physical Therapy Association, and the Texas Occupational Therapy Association were contacted for input concerning consolidation of the two boards. The response to the concept of combining the two boards was generally favorable. However, several members of the Occupational Therapy Board who were contacted, expressed concern over the possibility that the efforts of two closely related professions to maintain separate professional identities could make it difficult to administer both professions under a single board. In order to determine the seriousness of this concern three states who operate with combined boards were contacted. In two instances, the occupational therapists indicated that the combination had resulted in a greater understanding and cooperation between the two professions rather than less. In the third instance, the combination had occurred despite strong objections by the two groups and there continue to be difficulties. The review did, however, identify one organizational alternative which could minimize the possibility of problems between representatives of separate professions on one board. Rather than always operating as a committee of the whole, sections can be created within a board that has jurisdiction over the adoption of rules and regulations affecting the respective professions. An example of that structure in Texas can be seen in the Finance Commission which regulates banks, savings and loans, and small loan lenders through one policy board with three sections composed of members of each section.

While this approach might be looked at as producing no real change, in that multiple agencies still exist under a different title, real opportunities for improvement could result. There would be an opportunity to reduce conflict between rules and regulations covering similar licensee groups; there would be an opportunity to work out cost-saving techniques within common administrative areas; and there would be an opportunity to produce consistent changes in the statutory framework dealing with multiple areas of regulation.

OTHER POLICY CONSIDERATIONS

During the review of an agency under sunset, various issues were identified that involve significant changes in state policy relating to current methods of regulation or service delivery. Most of these issues have been the subject of continuing debate with no clear resolution on either side.

Arguments for and against these issues, as presented by various parties contacted during the review, are briefly summarized. For the purposes of the sunset report, these issues are identified so they can be addressed as a part of the sunset review if the Sunset Commission chooses to do so.

OTHER POLICY CONSIDERATIONS

This section covers that part of the evaluation which identifies major policy issues surrounding the agency under review. For the purpose of this report, major policy issues are given the working definition of being issues, the resolution of which, could involve substantial change in current state policy. Further, a major policy issue is one which has had strong arguments developed, both pro and con, concerning the proposed change. The material in this section structures the major question of state policy raised by the issue and identifies the major elements of the arguments for and against the proposal.

Should the board be abolished and the regulation of occupational therapists be discontinued.

Occupations should be regulated by the state only when their unregulated practice can clearly harm or endanger the public and consumers cannot be adequately protected by other means. To assess the need to license occupational therapists, the review focused on the scope of practice, the potential for harm, the evidence of other alternative means of protecting the public, and the protection under the current Act.

Scope of Practice

In order to assess whether or not occupational therapists have a technical scope of practice that requires licensing, the educational requirements to become an occupational therapist were examined. Educational programs for occupational therapists throughout the country must meet standards and criteria set by AOTA. The AOTA collaborates with the American Medical Association in the inspection and approval of the occupational therapy educational programs. Accredited baccalaureate degree programs in occupational therapy in Texas are currently located at the University of Texas-Medical Branch at Galveston, Texas Women's University, the University of Texas Health Science Center at San Antonio and Texas Tech University in Lubbock. Associate degree programs for occupational therapist assistants are offered by St. Phillips Community College in San Antonio, Houston Community College and Austin Community College. These programs graduate approximately 200 students annually. The four-year program leading to a Bachelor of Science Degree consists of two years of general education courses, generally obtained at any accredited college or university, and two years of clinical courses and supervised field work offered in association with a Health Science

Center and a variety of patient care settings. The results of the review indicated that occupational therapists were required to acquire a specialized body of knowledge. The scope of practice for occupational therapy involves treating patients with diagnoses such as spinal cord injury, burns, head trauma, stroke, cerebral palsy, hand injuries, schizophrenia and learning disorders and assisting these patients through techniques which include, but are not limited to: 1) the instruction in daily living skills such as eating, dressing and grooming; 2) the adaptation of environments to accommodate handicaps; and 3) the use of specifically designed crafts and exercises to enhance functional performance which requires the need for assurance of technical competence in order to protect the public's health, safety and welfare.

Evidence of Harm

The regulation of individuals desiring to pursue a profession is appropriate when it can be demonstrated that harm can be inflicted through the improper execution of the practices associated with the profession. The review indicated that the majority of occupational therapists work in health-related employment settings treating patients with a broad range of medical conditions and varying degrees of severity. Exhibit 2, provided by AOTA, contains information on the type of illnesses or conditions often treated by occupational therapists and the consequences of incompetent care.

To get additional indications of the potential harm to the public that the unregulated practice of occupational therapy might represent, the review attempted to identify any malpractice suits that have been brought against occupational therapists. No relevant suits were identified. However, the review was limited by the fact that suits decided at the trial level are rarely published and insurance companies are typically hesitant to release information about policyholders which would identify the number of cases settled out of court.

Means of Regulation

The American Occupational Therapy Association (AOTA) has maintained a voluntary professional registration program for occupational therapists since 1917. Since 1932, the association has maintained a registry of occupational therapists who meet specified education and experience requirements and pass the registration examination. Occupational therapy assistants have been certified since 1975. The AOTA requirements for registration as an occupational therapist or certification as an occupational therapy assistant are essentially the same requirements

for state licensure. Currently, approximately 1,400 occupational therapists and 300 assistants practicing in Texas are registered with AOTA. The review also indicated that many of the primary employers of occupational therapists and assistants including public school systems, general hospitals and rehabilitation facilities currently have hiring requirements similar to those required for licensure. However, if these minimum hiring requirements are changed or otherwise altered at a future date, without licensure no mechanism would exist to ensure a high quality of professional occupational therapy service.

Protection Under the Current Act

Next the review focused on the degree of protection available to the public under the current Act. In general, occupations are regulated through a "practice act" or a "title act". Under a practice act, a state regulates not only the use of a particular occupational title, but defines and enforces the nature of the practices that are allowed or not allowed to be carried out only by the licensee. Under a title act, once the individual has met the educational requirements set by the state for the use of the title, only the manner in which the occupational title may be used is regulated. This is a less restrictive form of regulation since under a title act individuals could still perform the activities as long as they do not use the title.

The review showed that although the Occupational Therapy Act is a practice act, it is a weak or permissive practice act that in reality probably provides no more protection than most title acts because the definition of occupational therapy practice is not clearly and tightly defined, and because the statute exempts individuals acting as an occupational therapist when they are under the supervision of individuals licensed by the Texas State Board of Medical Examiners. A similar exemption for individuals under the supervision of licensed physicians is contained in other health licensing acts in Texas, including the Nurse Practice Act and the Physical Therapy Act. The exemption is generally interpreted to exempt from licensure personnel employed in hospitals, similar institutional facilities, or other settings where the physician has assumed and exercises control or supervision of an individual or has personally instructed that person in the acts to be done (Texas Attorney General's Opinions H-395 and H-368). As a result of the exemption more than 60 percent of those eligible for licensure as an occupational therapist will be subject to regulation only on a voluntary basis, thus diluting the potential protection of the Act.

Despite these potential weaknesses, the Act does prevent unqualified individuals from setting up a practice and holding themselves out to the public as an

occupational therapist. Also by requiring physician referral in medical cases, the statute also acts to bring therapists into a recognized network of health care professionals rather than permitting these allied health care providers to operate without adequate medical supervision.

Although there is a well-established private registration program for occupational therapists sponsored by AOTA which could assist the public identify qualified private practitioners in the absence of licensing; without a state licensing act there is no way to prevent unqualified and untrained individuals from holding themselves out to be occupational therapists, to effectively discipline and regulate practicing occupational therapists and to ensure that those therapists working with patients with medical problems will be referred and supervised by a physician.

APPENDIX

Exhibit 1
AOTA LICENSING EXAMINATION PASS/FAIL RATES
1982-1983

<u>Date</u>	<u>Total Examined</u>	<u>Number Passed</u>	<u>Percent Passed</u>	<u>Number Failed</u>	<u>Percent Failed</u>
<u>January 1982</u>					
First Time U.S. Candidates	902	875	97%	27	3%
Repeat U.S. Candidates	85	42	49%	43	51%
First Time Foreign Candidates	34	20	59%	14	41%
Repeat Foreign Candidates	23	4	17%	19	83%
<u>June 1982</u>					
First Time U.S. Candidates	1,074	1,017	95%	57	5%
Repeat U.S. Candidates	72	28	39%	44	61%
First Time Foreign Candidates	26	15	58%	11	42%
Repeat Foreign Candidates	26	6	23%	20	77%
<u>January 1983</u>					
First Time U.S. Candidates	969	945	98%	24	2%
Repeat U.S. Candidates	103	50	49%	53	51%
First Time Foreign Candidates	35	24	69%	11	31%
Repeat Foreign Candidates	26	12	46%	14	54%
<u>June 1983</u>					
First Time U.S. Candidates	1,076	1,011	96%	45	4%
Repeat U.S. Candidates	79	34	43%	45	57%
First Time Foreign Candidates	40	28	70%	12	30%
Repeat Foreign Candidates	26	4	15%	22	85%

Exhibit 2

**OCCUPATIONAL THERAPY
FUNCTIONS**

ILLNESS/INJURY

**CONSEQUENCES TO THE CONSUMER WHEN CARE IS
ERRONEOUS, INCOMPETENT OR OMITTED**

- A. Independent Living/Daily Living Training (ADL)
Feeding/eating
Hygiene/Grooming
Dressing Training
Functional Mobility
Object Manipulation
Work (homemaking)
Child care/parenting
Employment preparation
Emotional/psychological
Daily living skills training

Total hip replacement and other orthopedic conditions

Cardio/pulmonary disease - i.e. myocardial infarction, Congestive heart failure, COPD Congestive Obstructive Pulmonary Disease, cardiac surgery

Spinal Cord Injury

Arthritis

- B.1. Sensorimotor Training
Reflex Integration
Range of Motion Exercises (ROM)
Gross and Fine Motor
Coordination Training
Neuromuscular Facilitation/inhibition
Muscle strengthening

Spinal Cord Injury

Improper lower extremity dressing technique or transfer training could cause hip dislocation, pain and loss of function in that extremity

Inadequate knowledge and erroneous selection of a daily living activity progression with respect to the energy required to perform that activity and the patient's cardio-pulmonary response to that activity may cause over-fatigue, extension of an infarct, cardiac arrest or even death. Failure to implement such a program facilitates inactivity, loss of function, depression, deterioration of cardiovascular system and shortened life span.

Improper transfer technique or improper selection of adaptive equipment will facilitate skin lesions, decubitus ulcers and/or further injury to an unstable spinal cord and paralysis.

Failing to educate the arthritic patient in joint protection technique, energy conservation and work simplification methods results in increased synovitis, joint damage, pain and loss of function.

In patients with spinal cord injury producing quadriplegia when no functional return is projected in finger flexors the trained OTR/COTA would not reduce mild to moderate contractures developing in finger flexors. These contractures may assist the patient to develop a more functional grasp. The incompetent or untrained practitioner would stretch these contractures producing further functional loss in the patient with a spinal cord injury.

**OCCUPATIONAL THERAPY
FUNCTIONS**

ILLNESS/INJURY

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The OTR evaluated then selectively applied functional activities and exercises to increase or decrease muscle tone, to strengthen, to mobilize joints and increase coordination in the upper extremities shoulder girdle, neck and face.

Low endurance (Multiple Sclerosis, Guillian Barre Syndrome, Amyotrophic Lateral Sclerosis) Elderly, Acutely Ill

CVA (stroke), Head injury and other neuromuscular disease/injury

In the acutely ill or patients with diagnoses and precautions of low endurance the incompetent practitioner without knowledge/training in activity and exercise analysis may overly fatigue the patient, extend the illness, increase pain and weakness or facilitate life threatening complications.

Practitioners without adequate knowledge of neuroanatomy/physiology and without adequate education and training to enable them to apply sensory-motor technique correctly will delay or permanently disrupt optimal functioning of the patient with a neuromuscular illness or injury. A frequently seen example is the CVA (stroke) patient. It is a common occurrence for a well meaning member of the medical team to instruct a CVA patient to squeeze a ball to increase grasp strength. A competent OTR/COTA would rarely instruct a patient to do so. Following evaluation in most cases, you will find excessive muscle tone in the flexor/pronator muscle groups, a competent practitioner would inhibit tone in these muscle groups while facilitating increased tone and strength of opposing muscle groups. Erroneous treatment produces an individual with an arm that is flexed at the elbow and held close to the body with a hand that is fisted. The patient will be unable to open his hand or reach out with his/her arm functionally.

B.2. Sensory Integration Training
Vestibular and Bilateral
Integral Training
Tactile Integration
Training
Praxis (motor planning)
Visual Perceptual Training

Developmental Delay

As with other forms of neurodevelopmental treatment, incorrect application of therapeutic techniques may produce an undesirable physiologic/functional response. Over stimulation without careful knowledge of the patient's status and physiologic response to that stimulation may have dangerous results. Vestibular stimulation reduces respirations and heart rate and has been reported to envoke convulsions.

OCCUPATIONAL THERAPY
FUNCTIONS

ILLNESS/INJURY

CONSEQUENCES TO THE CONSUMER WHEN CARE IS
ERRONEOUS, INCOMPETENT OR OMITTED

40

C.1. Therapeutic Adaptation
Orthotics - The fabrication
and selection of static and
dynamic splints and slings for
the purpose of relieving pain,
maintaining joint alignment,
protecting joint integrity,
improving function and/or re-
ducing deformities.

Acute Burn Injury

Spinal Cord Injury

Sensory integrative deficits are more subtle physical abnormalities. Accurate diagnosis and effective treatment planning requires the administration of extensive standardized evaluations and clinical observations which are impossible to administer and interpret properly without education and training.

Such tools in incompetent hands leads to extensive time and money wasted, misdiagnosis and possible mislabeling of a child and wasted time and money spent on treatment techniques that produce poor results.

Selection/fabrication of the wrong splint/sling causes further joint deformity, skin breakdown and loss of function. Poor construction will cause the splint to be less durable and more costly for the patient.

An OTR without current splinting knowledge/training applied the wrong splint to the hand of an acute burn patient. This patient's MCP joints should have been splinted in 90 degree flexion to prevent skin adhesions and contractures at those joints. This therapist splinted the patient in full joint extension causing the patient to lose function of that hand.

Unqualified personnel selected and issued splints designed to increase hand function (flexion hinge splints) in a quadriplegic patient. This type of flexion hinge splint was much too heavy and cumbersome for this patient and actually decreased hand function. A new set of equally costly appropriate splints had to be purchased for this patient.

**OCCUPATIONAL THERAPY
FUNCTIONS**

ILLNESS/INJURY

**CONSEQUENCES TO THE CONSUMER WHEN CARE IS
ERRONEOUS, INCOMPETENT OR OMITTED**

- C.2. Therapeutic Adaptation Prosthetics - The OTR evaluates the patient with upper extremity amputation and determines from this assessment what type of prosthesis to prescribe - what weight limb, harness, elbow unit, wrist unit, terminal device, etc.
- C.3. Therapeutic Adaptations Assistive/Adaptive equipment.

Amputation

There have been frequent instances when a prosthesis has been erroneously prescribed by unqualified personnel. In a like number of cases the patient was never trained to use the limb. In both instances the prosthesis is useless. Such occurrences cause great functional and financial loss to the patient.

ACROSS-THE-BOARD RECOMMENDATIONS

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies are denoted in abbreviated chart form.

TEXAS ADVISORY BOARD OF OCCUPATIONAL THERAPY

Applied	Modified	Not Applied	Across-the-Board Recommendations
A. GENERAL			
		*	1. Require public membership on boards and commissions.
		*	2. Require specific provisions relating to conflicts of interest.
		*	3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
		*	4. Require that appointment to the board shall be made without regard to race, creed, sex, religion, or national origin of the appointee.
		*	5. Specify grounds for removal of a board member.
		*	6. Require the board to make annual written reports to the governor, the auditor and the legislature accounting for all receipts and disbursements made under its statute.
		*	7. Require the board to establish skill oriented career ladders.
		*	8. Require a system of merit pay based on documented employee performance.
		*	9. Provide that the state auditor shall audit the financial transactions of the board at least once during each biennium.
		*	10. Provide for notification and information to the public concerning board activities.
		*	11. Place agency funds in the Treasury to ensure legislative review of agency expenditures through the appropriation process.
X			12. Require files to be maintained on complaints.
X			13. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
		*	14. (a) Authorize agencies to set fees. (b) Authorize agencies to set fees up to a certain limit.
		X	15. Require development of an E.E.O. plan.
X			16. Require the agency to provide information on standards of conduct to board members and employees.
X			17. Provide for public testimony at agency meetings.
X			18. Require that the policy body of an agency develop and implement policies which clearly separates board and staff functions.

*Already in statute or required.

Texas Advisory Board of Occupational Therapy
(Continued)

Applied	Modified	Not Applied	Across-the-Board Recommendations
B. LICENSING			
X			1. Require standard time frames for licensees who are delinquent in renewal of licenses.
	X		2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		*	3. Provide an analysis, on request, to individuals failing the examination.
X			4. Require licensing disqualifications to be: 1) easily determined, and 2) currently existing conditions.
		*	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		*	6. Authorize the staggered renewal of licenses.
		*	7. Authorize agencies to use a full range of penalties.
X			8. Specify board hearing requirements.
		*	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
X			10. Authorize the board to adopt a system of voluntary continuing education.

*Already in statute or required.