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**Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board**

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Governor  
*Mike DeWine*  
Executive Director  
*Missy Anthony*

Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board  
Missy Craddock Anthony, Executive Director  
House Finance Subcommittee on Agriculture, Development, and Natural Resources  
House Bill 110  
February 18, 2021

Good afternoon Chairman Kick, Ranking Member O'Brien, and members of the Agriculture, Development, and Natural Resources Subcommittee of Finance. My name is Missy Anthony, Executive Director of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board. Thank you for the opportunity to testify on the OTPTAT Board budget as proposed in House Bill 110.

The mission of the Ohio OTPTAT Board is to actively promote and protect the health of Ohioans through effective regulation of the professions of occupational therapy (OT), physical therapy (PT), athletic training (AT), orthotics, prosthetics, and pedorthics (OPP). This is accomplished through primary tasks of regulation:

- Establishing and checking requirements for entry into the profession
- Adopting administrative rules to increase transparency and create processes for efficient regulation
- Investigating complaints and disciplining licensees for violations of the code of ethics
- Assuring continued competence of licensees through required continuing education

These essential functions are accomplished by a team of nine FTEs and payroll drives the bulk of the agency's budget.

The OTPTAT Board is four programs within the Regulation Program Series. Therefore, for common expenses, costs are allocated to four sections based on the percentage of license holders each Board had at the start of the fiscal year. For this budget request, the percentages are: OT - 33%; PT - 57%; AT - 9%, and OPP - 1%.

As a member of Fund 4K90, the OTPTAT Board's budget is entirely supported by revenue raised through licensure fees and disciplinary fines. The Board respectfully requests spending authority totaling \$1,168,045 in FY 22 and FY 23. This is the same amount as appropriated for the current fiscal year 2021. Barring any major expenses related to disciplinary hearings, any wage changes negotiated through the collective bargaining agreement, or legislative initiatives which require eLicense changes, the Board should be able to live within the appropriation. Payroll and eLicense costs are two of the main drivers of the OTPTAT Board budget. Based on historical revenue trends, the anticipated revenue in the upcoming biennium will cover the amount requested by the Board in this budget request, as the OTPTAT Board has historically been a net contributor to the 4K90 fund.

## Language Changes

The FY 22-23 budget as proposed includes a handful of language changes being sought by the Board to clean up several provisions of law that are no longer in use and are confusing to license holders and other items aimed at improving the disciplinary statute for the board.

1. OTPTAT Board members are currently permitted by law to serve an additional sixty days after the expiration of their term on August 27. This is helpful in giving the Governor's office appropriate time to thoroughly vet the appointments to find well-qualified candidates. This amendment would simply extend the sixty days to ninety in order to cover the November Board meeting.
2. The statute governing occupational therapy references a limited permit and license escrow option which are no longer offered by the OTPTAT Board. This often causes confusion for our licensees. The limited permit was previously a way for people to start practicing prior to passing the national exam. The Board decided many years ago that allowing someone to practice prior to passage of the exam is a risk to the public and eliminated the permit. The Board recently eliminated the option to escrow a license because the steps to restoring the license were identical to those of reinstating an expired license. Eliminating this option reduced administrative confusion and streamlined the path for licensees. This amendment is being proposed to clean up the statute related to these options.
3. The statute for physical therapy requires, as a part of the license application process, a physical description and photograph. The Board has no need for these records, and this submission causes occasional delays in application processing, as the photos received are oftentimes unusable. The Board does not need to have to continue to store these photographs when they have little value to Board operations, so this submission is proposed for elimination.
4. The physical therapy statute also includes antiquated language requiring a minimum level of credits in certain academic categories. As physical therapy programs have evolved to the doctorate degree, the required academic categories have changed and no longer match what is in statute. The Board would like to replace this reference with a requirement that a person has graduated from a program accredited by an agency approved by the Board. This aligns Ohio's law with the Model Practice Act for physical therapy. A second change for physical therapist assistant education is also suggested.
5. The Board sometimes sees cases where a licensee is court involved for an offense for which the court has ordered intervention in lieu of a conviction. In such cases, an offense, sometimes of a felonious nature, has been committed, but the person is not required to report it to the Board, nor can the Board necessarily take action on the license as a result. Most often, it is the desire of the Board to mirror and support the intervention required by the Court and not to add additional requirements. Clarifying statute to allow the Board to take action due to a judicial finding of eligibility for intervention in lieu of conviction would enhance the Board's enforcement powers to support a court's findings. This amendment is based on Medical Board statute.
6. References to sexual conduct being the basis for disciplinary action varies between the OT, PT, AT, and OPP Sections. The Board recently had a case where enforcement was made more difficult because the PT statute only references sexual conduct, which was too narrow a definition for the incident that had occurred. This amendment proposes to cross reference the definitions for both sexual conduct and sexual contact across all

parts of the statute to ensure the Board has sufficient authority for discipline for egregious offenses of a sexual nature.

7. In 2018, the OTPTAT Board took over regulation of orthotics, prosthetics, and pedorthics (OPP) after the former OPP Board was eliminated. Over the past two years, the Board has identified several weaknesses in the disciplinary statute governing these professions. This amendment proposes to align the OPP statute (ORC 4779) with the OTPTAT law (4755) in the following three ways:
  - a. Explicitly allows for investigations to be held confidential.
  - b. Allows the board to discipline a licensee for action taken by another state on a license and clarifies the actions the Board may take to include fines and corrective actions.
  - c. Allows for the cost of an administrative hearing to be paid by the licensee being sanctioned if there is a sanction.
8. The Board recently had an individual appeal a board action to a common pleas court in a rural county. The logistics of accomplishing this appeal were a challenge in a jurisdiction not accustomed to taking such appeals. At the advice of counsel, the Board is requesting that Franklin County become the jurisdiction for all Board decision appeals, just as it is for the Medical Board, Chiropractic Board, and others. Franklin County allows for online filings, so this will not be an inconvenience for individuals living outside central Ohio.

#### **Fiscal Year 20-21 highlights:**

The past two years saw the implementation of several new initiatives, including the implementation of several legislative and efficiency efforts:

1. The FY 20-21 budget bill included language to give the OTPTAT Board regulatory oversight over the 3-D printing of open source prosthetic kits. The Board successfully worked with stakeholders involved in 3-D printing and the prosthetics industry to establish standards for this regulation which are reasonable but ensure a person has experience in the field and establishes a connection to the limb recipient's medical care professional.
2. Senate Bill 7 from last General Assembly established a new temporary military license for active military members and their spouses.
3. Eased access to license display by making wall license certificates available for download in the Ohio eLicense system.
4. The rules for the orthotics, prosthetics, and pedorthics professions, merged into the OTPTAT Board in 2018, were rewritten to line up processes and procedures with the other licenses under the authority of the OTPTAT Board.
5. Efforts to strengthen the Board's response to complaints alleging sexual violations per the Governor's Strauss Workgroup findings with particular attention to educating licensees on:
  - a. Duty to Report - All license holders should have a duty to report any unprofessional or illegal conduct to the Board by a fellow license holder. This is an issue that was identified by the Strauss Working Group.
  - b. Self-Report - All license holders have a duty to inform the Board of certain violations within thirty days.

- c. Informed Consent - All license holders must obtain informed consent from their patients or from the parents of a minor patient for treatment. But informed consent requires that the patient have a full knowledge of the treatment and what it entails. This may require obtaining continuous consent and constantly communicating with a patient as treatment progresses to ensure their comfort level, especially if treatment involves sensitive areas of the body.

Like everyone else, the Board has had to respond to the COVID-19 emergency. Questions about telehealth, licensure requirements across state lines, supervision and delegation under unique circumstances, and general scope of practice have become common during this time. The Board also made the following adjustments to respond to the emergency:

1. Per legislative action, renewal deadlines were delayed first until December 1, 2020 and again until July 1, 2021. This has impacted seven of the nine license types issued by the Board. The Board has encouraged licensees to renew on time if they can in order to reduce confusion over the licensing and continuing education deadlines. However, there will always be a subset of people who wait until the last minute. This has had an impact on Board revenues which are derived largely from renewal fees. The Board expects to recoup most of this revenue, but some of it may spill into Fiscal Year 2022 if people wait to renew in the few days prior to July 1.
2. Early on in the emergency, exam centers were closed or had to reduce capacity, making scheduling for these exams challenging. For an Ohio physical therapist or physical therapist assistant applicant, a jurisprudence exam is required to be taken at an exam center. Recognizing the scheduling challenge, the Board was able to begin allowing license applicants to take an alternate laws and rules exam called the jurisprudence assessment module which had recently been developed. This module is taken at home and does not require testing center access. This eased the burden to the license applicant while continuing to ensure quality licensing standards.

### **Challenges for the FY 2022-2023 Biennium**

Looking forward to the FY 22-23 biennium, the Board has several initiatives on the horizon. Interstate licensure compacts are being considered by the legislature for physical therapy and occupational therapy (Senate Bills 5 and 7). These compacts would safely ease the ability to practice across state lines without sacrificing licensure standards. The explosion of therapy telehealth services during the COVID emergency have certainly demonstrated the advantages to belonging to the interstate licensure compacts and would benefit Ohio licensees greatly. The Board also continues to examine its policies and procedures to look for opportunities for greater efficiency. We also continue to work to strengthen our response to complaints related to sexual boundaries by implementing the suggestions from the Governor's working group on the Strauss case.

On behalf of the OTPTAT Board, I appreciate thoughtful consideration of the Board's FY 2022-2023 budget request, and I am happy to answer any questions.

**Historical Trends:**

**Number of License Holders by Fiscal Year**

License	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
OT	4,550	4,849	4,871	5,233	5,548	5,732	5,661	6,150	6,205	6,650
OTA	3,191	3,474	3,771	4,102	4,479	4,470	4,694	5,058	4,985	5,170
PT	7,764	7,824	8,459	8,604	9,185	9,387	9,795	9,888	10,493	10,578
PTA	5,855	6,299	6,597	7,122	7,613	8,060	7,943	8,433	8,477	8,842
AT	2,008	2,250	2,235	2,509	2,815	2,903	2,753	2,985	2,903	3,094
LO								78	72	81
LP								64	61	70
LPED								81	77	80
LPO								122	133	145
<b>TOTAL</b>	<b>23,368</b>	<b>24,696</b>	<b>25,933</b>	<b>27,570</b>	<b>29,640</b>	<b>30,552</b>	<b>30,846</b>	<b>32,859</b>	<b>33,406</b>	<b>34,710</b>
Increase	5.39%	5.68%	5.01%	6.31%	7.50%	5.28%	1%	6.5%	1.7%	3.9%

Enforcement statistics - FY 2020

	Occupational Therapy	Physical Therapy	Athletic Trainers	Orthotics, Prosthetics, Pedorthics	Total
Investigations Initiated of Potential Violations of the Practice Act	104	172	51	2	329
Consent Agreements	10	16	4	0	15
Reprimands	0	5	0	0	5
Fines	3	4	2	0	9
On-going Monitoring	5	19	4	0	28
Probation	2	3	2	0	7
Suspension	2	2	0	0	4
Disciplinary License Surrender/Revocation	5	4	1	0	10
ORC 119 Hearings	9	3	0	0	12
Revocation	1	4	0	0	5
Suspension or Probation	4	5	2	0	11
Application Denial	0	0	1	1	2
No Disciplinary Action Taken	5	26	3	1	35
Revocation	1	4	0	0	5
Suspension	2	2	0	0	2
Fine and Written Reprimand	3	9	2	0	14
Application Denial	0	0	1	1	2
No Disciplinary Action Taken	94	157	44	1	296
<i>Non-Disciplinary Resolutions</i>	89	109	40	0	238
<i>No Violations Found</i>	5	26	3	1	35
<i>Cases Not Yet Resolved</i>	25	48	10	1	84