

### **PRACTICE COMMITTEE REPORT.**

The following items were reviewed by the Committee at its meetings:

- Board-approved amendment to BPC 2570.2(k)
- AOTA Memo re: model practice act and proposed definition of OT
- AOTA - OT Research Agenda
- Practice Committee Roles & Responsibilities (approved 8/2006)
- Course provider qualifications for various health boards
- Chart/notes re: other states regulation of OT Aides
- PTB laws/ regs re: supervision of aides
- October 19, 2010, Practice Committee Meeting Minutes
- January 27, 2011, Practice Committee Meeting Minutes

**Amend Business & Professions Code Section 2570.2(k)**

(k) "~~Practice of~~ Occupational therapy" means the therapeutic use of purposeful and meaningful goal-directed activities (occupations) which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and promote or maintain health, well being, and quality of life.

Occupational therapy services encompass research, education of students, occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)); individuals, groups, programs, organizations, or communities.

(1) Occupational therapy assessment identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities.

Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability.

Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices excluding gait training). Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, or in groups, or through social groups.

(2) The licensed occupational therapist or occupational therapy assistant may assume a variety of roles in their profession, including but not limited to, clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/clients. The term "client" is used to name the entity that receives occupational therapy services.

Clients may be categorized as:

a) individuals, including individuals who may be involved in supporting or caring for the client (i.e. caregiver, teacher, parent, employer, spouse);

b) individuals within the context of a group (e.g., a family, a class); or

c) individuals within the context of a population (e.g., an organization, a community).

(l) "Hand therapy" is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

(m) "Physical agent modalities" means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

**MEMORANDUM**

TO: AOTA Board of Directors  
Representative Assembly  
Affiliated State Association Presidents  
Commission on Practice  
Commission on Continuing Competence and Professional Development  
Special Interest Section Steering Committee  
Accreditation Council for Occupational Therapy Education  
Association of Student Delegates Steering Committee  
Commission on Education  
Ethics Commission  
Education Program Directors  
State Legislative Chairpersons  
State Occupational Therapy Regulatory Boards  
Paul Grace, President and CEO, NBCOT  
AOTA Staff

FROM: Chuck Willmarth  
Director, State Affairs and Reimbursement & Regulatory Policy

Marcy Buckner, JD  
State Policy Analyst

DATE: September 23, 2010

SUBJECT: Feedback regarding the revised Definition of Occupational Therapy Practice for the AOTA Model Practice Act

AOTA has worked with state occupational therapy associations to enact state licensure laws for more than 30 years. Part of that support has included the development of reference documents such as the *AOTA Model Practice Act*, which includes a definition of occupational therapy practice.

The *Definition of Occupational Therapy Practice for the AOTA Model Practice Act* reflects the current scope of practice of occupational therapy and consistency with other AOTA documents. It is intended for use by state associations and state regulatory boards in updating state practice acts to reflect current practice and terminology. Once enacted into law, the definition legally defines the occupational therapy scope of practice in state statutes.

Revisions to the definition were last adopted by the RA in 2004. In June 2010, AOTA's State Affairs Group sought input from the Association's leadership, external stakeholders, and the membership in order to facilitate revisions to the definition. The input that was submitted was reviewed by AOTA staff, and has been compiled in to a revised version of the definition. We are now seeking comments on the revised version of the definition through this Zoomerang Survey: <http://www.zoomerang.com/Survey/WEB22B6PWLFFCCA>.

Memorandum regarding the revised Definition of Occupational Therapy Practice  
September 23, 2010  
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The survey breaks the existing definition paired with the revised definition into six sections to provide feedback and then asks three general questions about the document. In the revised text, words with a strikethrough have been deleted and words with an underline have been added.

You may also submit proposed edits to the document using the "track changes" feature in WORD to [stpd@aota.org](mailto:stpd@aota.org). You may access the revised definition in WORD here:  
<http://www.aota.org/DocumentVault/Surveys/Model-Def-Revision.aspx>

Please complete the survey and/or submit feedback by October 29, 2010. Your input in this process will help define the occupational therapy scope of practice as the profession works to realize the Centennial Vision.

Draft Revisions to the Model Definition of Occupational Therapy Practice based on Stakeholder Input - September 2010  
Please submit comments to [stpd@aota.org](mailto:stpd@aota.org) by October 29, 2010.

Note: Text with a ~~strikethrough~~ has been deleted and text with an underline has been added. Sections A and B in the current version were switched in the revised version, so A is now B and B is now A.

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## Definition of Occupational Therapy Practice for the AOTA Model Practice Act

The practice of occupational therapy means the therapeutic use of everyday life activities (occupations) with individuals or groups, or populations ~~for the purpose of to address~~ participation and function in roles and situations in home, school, workplace, community, and other settings. Occupational therapy services are provided ~~for the purpose of promoting for habilitation, rehabilitation, and promoting~~ health and wellness and to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation, or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect physical and mental health, well-being, and quality of life.

The practice of occupational therapy includes:

- A. Evaluation of factors affecting activities of daily living (ADL), ~~instrumental activities of daily living (IADL)~~, education, work, play, rest and sleep, leisure, and social participation, including:
  1. Client factors, including body functions (such as neuromuscular, sensory and pain, visual, mental, perceptual, cognitive) and body structures (such as cardiovascular, digestive, nervous, integumentary, genitourinary systems), values, beliefs, and spirituality.
  2. Habits, routines, roles, rituals, and behavior patterns
  3. Cultural, physical, environmental, social, and spiritual ~~virtual~~ contexts and activity demands that affect performance
  4. Performance skills, including motor and praxis, ~~process~~, sensory-perceptual, emotional regulation, cognitive, and communication/interaction and social skills.
- B. Methods or ~~strategies~~ approaches selected to direct the process of interventions such as:
  1. Establishment, ~~remediation, retention, or restoration~~ of a skill or ability that has not yet developed or is impaired, or is in decline.
  2. Compensation, modification, or adaptation of activity or environment to enhance performance.
  3. ~~Maintenance~~ Retention and enhancement of ~~capabilities~~ skills or abilities without which performance in everyday life activities would decline.
  4. ~~Health promotion~~ Promotion of health and wellness, including the use of self-management strategies, to enable or enhance performance in everyday life activities.
  5. Prevention of barriers to performance and participation, including disability prevention.
- C. Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, rest and sleep, leisure, and social participation, including:
  1. Therapeutic use of occupations, exercises, and activities.
  2. Training in self-care, self-management, health management and maintenance, home management, and community/work reintegration.
  3. Development, remediation, or compensation of physical, mental, cognitive, neuromuscular, sensory functions and behavioral skills.
  4. Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.
  5. Education and training of individuals, including family members, caregivers, groups, and others.
  6. Care coordination, case management, and transition services.
  7. Consultative services to groups, programs, organizations, or communities.

8. Modification of environments (home, work, school, or 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 wheelchair management of wheelchairs and other mobility devices.
11. Low vision rehabilitation.
12. Driver rehabilitation and community mobility.
13. Management of feeding, eating, and swallowing to enable eating and feeding performance.
14. Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

Adopted by the Representative Assembly 5/21/04 (Agenda A11, Charge 60)

DRAFT



THE AMERICAN  
OCCUPATIONAL THERAPY  
FOUNDATION



The American  
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### OCCUPATIONAL THERAPY RESEARCH AGENDA

The Occupational Therapy (OT) Research Agenda identifies the major research goals and priorities for occupational therapy research. The goals and priorities span five categories: **Assessment/measurement, Intervention Research, Basic Research, Translational Research, and Health Services Research.** A sixth related category, **Research Training**, addresses capacity building to accomplish the research goals and priorities.

Three of the five research categories—**Intervention Research, Translational Research, and Health Services Research**—are recognized as being of paramount importance for the next decade because it is imperative that the efficacy and effectiveness of occupational therapy interventions be ascertained; that the optimal dose, frequency, duration, and location of occupational therapy interventions be determined; and that the salient elements (or active ingredients) of occupational therapy interventions be identified. The study of occupational engagement and participation, problems in engagement and participation, and interventions to restore, prevent or compensate for problems in engagement and participation is complex and requires the collaboration of scholars from various disciplines, thus placing occupational therapy research in an interdisciplinary context.

This emphasis on **intervention/prevention, translational, and health services** research is consistent with the American Occupational Therapy Association's Centennial Vision of occupational therapy as "a powerful, widely recognized, science-driven, and evidence-based profession." It is also consistent with the National Institutes of Health (NIH) Roadmap, the Initial National Priorities for Comparative Effectiveness Research put forth by the Institute of Medicine of the National Academies (June, 2009), the Testimony of the Disability and Rehabilitation Coalition before the Interagency Committee on Disability Research (August 13, 2008), the Effective Health Care Program of the Agency for Healthcare Research and Quality (AHRQ) (2008), and the comments by Senator Baucus (D-Mont) on Introduction of The Comparative Effectiveness Research Act of 2008 (August 1, 2008). Simply stated, our clients (patients) want the most effective interventions for their performance problems and occupational therapy practitioners want to provide them with these interventions. However, for practitioners to provide the most effective interventions, occupational therapy interventions must be defined, described, and tested, so that practitioners know what is effective for which clients. **Treatment effectiveness** takes into account considerations such as: what mixture (e.g., interesting task + progressive grading of cognitive components of task + modeling) of

occupational therapy is needed to promote positive change (can be delivered in a reproducible manner—is manualized); how strong must the intervention be to promote positive change (dose), how often must clients (patients) participate in the intervention to promote positive change (frequency); how long must the intervention be delivered to promote change (duration), and where (location) is the best place (hospital, school, home, workplace, community) for the intervention to occur. Likewise, prevention activities extend the role and function of occupational therapy into community activities aimed to promote occupational engagement and participation of the total population and to prevent secondary conditions among those already living with disabling conditions. Prevention research generally addresses a particularly vulnerable, but as yet unaffected, segment of the population with an emphasis on promoting occupation and preventing secondary conditions. This area, also, is in its infancy in occupational therapy and requires efficacy and effectiveness studies, but may require a more population-based approach to methodology.

The intent of placing a priority on **intervention, translational, and health services research** is to stimulate research on occupational therapy interventions. In examining occupational therapy interventions priority is given to interventions that are client-centered, occupation-based, theory-driven, and manualized. Recognizing that the science of occupational therapy practice is in its infancy, the priority is broadly defined to include preliminary work leading to efficacy (research under tightly controlled conditions) or effectiveness (research under real-world conditions) trials, that is, it includes "proof of concept" studies of interventions (including quantitative, qualitative, and mixed methodologies); pilot, feasibility studies of interventions; and, single-subject intervention studies.

Research Categories	Major Research Goals	Research Priorities
Assessment/ Measurement	<ul style="list-style-type: none"> <li>▪ Develop screening instruments to determine functional ability across the lifespan, with acceptable sensitivity and specificity.</li> <li>▪ Develop outcome instruments sufficiently responsive to measuring change in daily life activities, including activity and participation.</li> <li>▪ Develop and evaluate strategies for identifying and/or measuring the health impact of environments on activity engagement and participation in daily life.</li> <li>▪ Develop and evaluate strategies for identifying and/or measuring the influence of activity engagement in daily life on health.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Screening instruments to identify performance deficits in persons of all ages with chronic disorders and disability.</li> <li>▪ Instruments for simultaneously evaluating person—occupation—environment (context).</li> </ul>



Research Categories	Major Research Goals	Research Priorities
<p><b>Intervention — Preventive, Restorative, Compensatory:</b> To promote function/wellness in people of all ages—those without disabilities, those with (or at-risk for) disabilities, and/or chronic health problems.</p>	<ul style="list-style-type: none"> <li>▪ Devise a taxonomy of occupational therapy/rehabilitative interventions (so that the content of occupational therapy can be uniformly described).</li> <li>▪ Evaluate the <i>efficacy</i> of occupational therapy interventions (in controlled conditions).</li> <li>▪ Create novel, theory based interventions for promoting activity/participation/occupation and improving quality of life.</li> <li>▪ Determine a means of evaluating the outcomes of occupational therapy interventions and prevention strategies in an interdisciplinary and translational context.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Application of interventions that:               <ol style="list-style-type: none"> <li>1) Are client-centered (i.e., personalized).</li> <li>2) Manipulate an occupational therapy modality/method (i.e., use as the method of change):                   <ol style="list-style-type: none"> <li>a) Occupation (i.e., activity/participation based)</li> <li>b) Cognitive, sensory, motor, and/or affective functions (i.e., impairment-oriented)</li> <li>c) The environment (i.e., lived-in, virtual; technology, including splints)</li> </ol> </li> <li>3) Are theory driven (e.g., motor learning theory, self-efficacy theory).</li> <li>4) Are manualized (i.e., structured, and hence replicable).</li> <li>5) Involve a priority population: defined as a subpopulation of concern both to society and to the field of occupational therapy and its interventions (see Addendum).</li> </ol> </li> </ul>

Research Categories	Major Research Goals	Research Priorities
<p><b>Translational Research</b></p>	<ul style="list-style-type: none"> <li>▪ Evaluate the <i>effectiveness</i> of occupational therapy interventions (under conditions of usual care).</li> <li>▪ Examine the implications of novel developments in sciences related to occupational therapy (e.g., medical/biopsychosocial/occupational/environmental) for the science and practice of occupational therapy.</li> <li>▪ Examine change processes, whereby new ideas are diffused and adopted in theory and practices.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Examine the effects of stem cell transplantation, neural implants and other novel and developing medical therapies on functional recovery (e.g., when is the best time to intervene to promote recovery of body structures/functions, activity, or participation).</li> <li>▪ Apply the methods of computational modeling to predict functional recovery (e.g., mathematical modeling of how hand function will improve following hand surgery and rehabilitation services).</li> </ul>

(Cont. from pg. 3)

Research Categories	Major Research Goals	Research Priorities
<p>Basic Research:</p> <p>1) The experience of disability and/or chronic health problems for individuals and their families across the life span.</p> <p>2) Examination of body structures and functions supporting performance in daily life.</p>	<ul style="list-style-type: none"> <li>▪ Examine relationships among impairment (body structures and functions), activity (activity limitations), and participation (participation restrictions).</li> <li>▪ Delineate how productive occupation promotes lifelong health and reduces the risk of chronic disease and disability and maintain quality of life in people of all ages.</li> <li>▪ Identify determinants of healthy lifestyles.</li> <li>▪ Examine the response of individuals and their families to changes in functional independence.</li> <li>▪ Examine intrinsic mechanisms (e.g., genetic, physiological, psychological [sensory-perceptual-motor, cognitive]) and how they support performance in daily life.</li> <li>▪ Examine extrinsic mechanisms (e.g., technology, social support, culture, social policies) and how they support performance in daily life.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Examine brain-behavior relationships in daily life activities.</li> </ul>

(Cont. from pg. 4)

Research Categories	Major Research Goals	Research Priorities
<b>Health Services Research</b>	<ul style="list-style-type: none"> <li>▪ Evaluate performance outcomes for diagnostic groups based on type of occupational therapy intervention, site of service delivery, professional training, and/or team composition.</li> <li>▪ Evaluate performance outcomes for racial/ethnic groups based on type of occupational therapy intervention, site of service delivery, professional training, and/or team composition.</li> <li>▪ Design and implement community-based participatory research to "increase the relevance, acceptability, and usefulness of evidence-based scientific findings in improving" occupational therapy (rehabilitation).</li> </ul>	<ul style="list-style-type: none"> <li>▪ Develop and implement a database for use in outcomes research and quality improvement studies.</li> <li>▪ Identify quality indicators for evaluating occupational therapy services and outcomes.</li> <li>▪ Design and implement studies comparing the effectiveness of different treatment options, including different occupational therapy approaches and different rehabilitation approaches.</li> <li>▪ Examine the effects of evidence-based evaluation and intervention guidelines on occupational therapy practice.</li> <li>▪ Identify where practice lags behind practice guidelines to provide evidence of need for quality indicators.</li> <li>▪ Identify, develop, and evaluate occupational therapy's role in community preparedness.</li> </ul>

Research Categories	Major Research Goals	Research Priorities
<b>Research Training</b>	<ul style="list-style-type: none"> <li>▪ Increase occupational therapy's research capacity.</li> <li>▪ Socialize occupational therapy educators to preparing occupational therapy scientists.</li> <li>▪ Expand occupational therapy's knowledge and skills in using population-based research for the purpose of prevention and promotion of occupation.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Prepare Program Directors in research universities to support early career (&lt; 5 years post doctoral degree) occupational therapist scientists.</li> <li>▪ Prepare doctoral students to conduct intervention research.</li> <li>▪ Financially support intervention research of early career (&lt; 5 years post doctoral degree) occupational therapist scientists and doctoral students.</li> </ul>

Addendum: Priority Populations; including individuals desiring to enhance their occupational function and health, and those who live with:

1. Developmental disorders (e.g., autism spectrum disorders, cerebral palsy, intellectual disabilities)
2. Physical impairments (e.g., stroke, obesity, cancer, spinal cord injuries, hand injuries, work injuries)
3. Cognitive impairments (e.g., dementia, traumatic brain injury, stroke)
4. Mental disorders (e.g., depression, posttraumatic stress disorder, persistent mental illness)
5. Chronic health conditions (e.g., arthritis, diabetes)
6. People with preventable secondary conditions (e.g., diabetic neuropathy, decubitus ulcers, social isolation, sedentary lifestyle)

California Board of Occupational Therapy  
**PRACTICE COMMITTEE**

**Roles & Responsibilities**

1. Review and provide recommendations to Board staff on *Applications for Advanced Practice Post-Professional Education* received from course providers;
2. Review and provide recommendations to Board staff on initial applications for licenses/certificates received from individuals who have not been engaged in the practice occupational therapy for five years;
3. Review and provide recommended responses to the Board on various practice issues/questions submitted by licensees and consumers;
4. Provide guidance on continuing competency audits, including reviewing and providing recommendations on audit responses, if necessary;
5. Review and provide recommendations to Board staff on applicants for the Expert Reviewer Program;
6. Review and provide recommendations to Board staff on revisions to various applications and forms used by the Board;
7. Review and provide recommendations to the Board on practice related proposed regulatory amendments.
8. Establish resource pool of Expert Reviewers to review and provide recommendations to Board staff on *Applications for Advanced Practice Approval* in hand therapy, physical agent modalities, and swallowing assessment, evaluation, or intervention.

***From Board of Behavioral Sciences' (BBS) regulations:***

**§1887.10. COURSE INSTRUCTOR QUALIFICATIONS**

(a) A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

- (1) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;
  - (2) a master's or higher degree from an educational institution in an area related to the subject matter of the course;
  - (3) training, certification, or experience in teaching subject matter related to the subject matter of the course; or
  - (4) at least two years' experience in an area related to the subject matter of the course.
- (b) During the period of time that any instructor has a healing arts license that is restricted pursuant to a disciplinary action in California or in any other state or territory, that instructor shall notify all approved continuing education providers for whom he or she provides instruction of such discipline before instruction begins or immediately upon notice of the decision, whichever occurs first.

**A condition for Probation from BBS' Disciplinary Guidelines:**

Instruction of Coursework Qualifying for Continuing Education Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

***From Physical Therapy Board's (PTB) regulations:***

**§1399.96. Standards for Approved Providers.**

Before it may approve a provider, the approval agency shall require that the provider adhere to the following requirements:

- (a) Topics and subject matter for each course shall be pertinent to the practice of physical therapy as required by section 1399.92.
- (b) Instructors for each course shall be competent in the subject matter and shall be qualified by appropriate education, training, experience, scope of practice or licensure.
- (c) Each course shall have a syllabus that includes learning objectives, bibliography and either a schedule, for courses offered in-person, or an outline, for courses offered online.
- (d) Each course shall have written educational goals and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.
- (e) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.
- (f) Each approved provider shall periodically review its courses to ensure content quality and currency.
- (g) Each participant shall be given the opportunity to evaluate each course and offer feedback to the approved provider. The approved provider shall consider any such evaluations for the purpose of updating or revising courses.
- (h) Each approved provider has a procedure to respond to complaints.
- (i) Each approved provider provides services to all licensees without unlawful discrimination.
- (j) Each approved provider shall maintain records regarding course content and licensee attendance for a minimum of seven years.
- (k) Each approved provider and instructor shall disclose any financial interest in products recommended during a course.
- (l) Each approved provider shall provide a certificate of completion to attendees.
- (m) Each approved provider shall ensure that any information it disseminates publicizing its continuing education courses is true and not misleading. Such information shall include a statement with the name of the approval agency, that such agency may be contacted about any concerns, any approved provider identification number, and the number of hours for which the course has been approved.

NOTE: Authority: Sections 2615 and 2676, Business and Professions Code.

Reference: Section 2676 and 2684, Business and Professions Code.

***From Speech-Language Pathology and Audiology Board's (SLPAB) regulations:***

**§1399.160.10. COURSE INSTRUCTOR QUALIFICATIONS.**

A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

1. (a) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;
2. (b) a valid, current certification in the subject area issued by the American Speech-Language-Hearing Association or the American Board of Audiology;
3. (c) training, certification, or experience in teaching courses in the subject matter; or
4. (d) at least two years' experience in an area related to the subject matter of the course.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(e), Business and Professions Code.



***From Board of Registered Nursing's (BRN) regulations:***

**§1454. Approved Providers**

- (a) For the purpose of this Article, the title "approved provider" can only be used when an individual, partnership, corporation, association, organization, organized health care system, educational institution or governmental agency, having committed no act which would lead to disciplinary action pursuant to Section 1459.1, has submitted a provider application on forms supplied by the Board, remitted the appropriate fee and has been issued a provider number.
- (b) An individual, partnership, corporation, association, organized health care system, governmental agency, educational institution and other organizations may be issued only one provider number; provided, however, that any autonomous entity within such organization may be issued one provider number.
- (c) An approved provider shall have a written and published policy, available on request, which provides information on:
- (1) refunds in cases of non-attendance
  - (2) time period for return of fees
  - (3) notification if course is cancelled.
- (d) The approved provider is required to accept full responsibility for each and every course, including, but not limited to recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor qualifications. When two or more providers co-sponsor a course, only one provider number shall be used for that course and that provider must assume full responsibility for recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor (s') qualifications.
- (e) Providers may not grant partial credit for continuing education.
- (f) Approved providers shall keep the following records for a period of four years in one location within the State of California, or in a place approved by the Board:
- (1) course outlines of each course given
  - (2) record of time and places each course given
  - (3) course instructor vitae or resumes
  - (4) name and license number of registered nurses taking any approved course and a record of any certificate issued to them.

(g) Approved providers must notify the Board, within thirty (30) days, of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course(s), including name and address changes.

(h) Provider approval is non-transferable.

(i) The Board shall audit records, courses, instructors and related activities of a provider.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code. History: 1. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51). 2. Amendment of subsection (a) filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

***From Board of Vocational Nursing (BRN) regulations:***

**§2540.3. Course Provider Approval.**

(a) An individual applying for approval as a continuing education course provider must:

(1) Complete and submit an application form supplied by the Board entitled, "Application to be a Continuing Education Course Provider for Licensed Vocational Nurses" (Form 55A-40; 09/05), hereby incorporated by reference. (2) The content of all courses of continuing education must be relevant to the practice of nursing and must:

(A) Be related to the scientific knowledge and/or technical, manual skills required for the practice of vocational nursing, or

(B) Be related to direct and/or indirect patient/client care.

(C) Learning experiences are expected to enhance the knowledge of the vocational nurse at a level above that required for licensure.

(3) Submit one course offering for Board review prior to course provider approval. Include the following information for the course submitted for review: (A) Identifying information for the name, location and contact of the provider. (B) A description of the subject matter of the course as it relates to recent developments in the vocational nursing field or in any special area of vocational nursing practice, including course title; (C) The course objectives; (D) Method(s) of instruction; (E) Total number of hours in the course and the course location; (F) Methods of evaluation: 1. for instructor evaluation of student achievement of course objectives; and 2. for student evaluation of course content and course instructor. (G) Course instructor's qualifications, as specified in Section 2540.4. (b) The Board will issue approval to the provider. A provider will not be approved for more than a two-year period. Following approval by the Board within each two-year period, the provider may offer an unlimited number of continuing education courses.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

(1) refunds in cases of non-attendance

(2) time period for return of fees

(3) notification if course is canceled

(d) The approved provider is required to accept full responsibility for each and every course, including but not limited to recordkeeping, advertising course content, issuance of certificates and instructor qualifications.

(e) Approved providers shall keep the following records for a period of four years:

(1) course outlines of each course given

(2) record of dates and places each course is given

(3) instructor curriculum vitae or resumes

(4) names and license numbers of licensed vocational nurses and/or psychiatric technicians who take any course offered by the approved provider and a record of any certificate issued to them.

(f) Provider approval is non-transferable.

(g) Approved providers must notify the Board within 30 days of any changes in information that was submitted on the most recent approved application to the board.

(h) Approval of a licensed vocational nurse continuing education course provider may be withdrawn if the Board later discovers misrepresentation in an advertisement or in any information required by the Board in accordance with this Article.

Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.5, Business and Professions Code History: 1. Amendment of subsections (a)(4) and (c) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9). 2. Amendment of subsection (a) filed 4-22-81; effective thirtieth day thereafter (Register 81, No. 17). 3. Amendment filed 11-16-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 47). 4. Amendment of section heading and section filed 5-4-2007; operative 6-3-2007 (Register 2007, No. 18).

#### **§2540.4. Course Instructors Qualifications.**

Instructors of continuing education courses shall meet two of the following: (a) Completion within two years preceding course approval of specialized training in the subject matter of the course; (b) Completion of academic studies related to the subject matter of the course within two years of course approval; (c) Experience teaching a course with similar subject matter content within the previous two years; (d) Six months of work experience in the subject matter of the course within the previous three years; or (e) Experience in developing academic courses within two years preceding course approval. Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.5, Business and Professions Code. History: 1. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9). 2. Amendment filed 11-16-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 47). 3. Amendment of section heading, first paragraph and subsection (d) filed 5-4-2007; operative 6-3-2007 (Register 2007, No. 18).

AIDES

	Regulations & Statutes Date	Regulated	Registered/Licensed	Report to Board	Supervision Defined	Comments
Alabama		N	N	YES	Y	Y
Alaska	Jun-10	N	N	N	Y	Y
Arizona		N	N	N	Y	Y
Arkansas		N	N	N	Y	Y
Colorado		N	N	N	Y/N	Y
Connecticut		N	N	N	N	Y
D.C.		N	N	N	Y	Y
Delaware		N	N	N	N	Y
Florida	Sep-10	N	N	N	Y	Y
Georgia		N	N	N	N	Y
Hawaii		N	N	N	N	Y
Idaho		N	N	N	Y	Y
Illinois		N	N	N	Y	Y
Indiana	2010	N	N	N	Y	Y
Iowa		N	N	N	N	Y
Kansas		N	N	N	Y	Y
Kentucky	2010	N	N	N	Y	Y
Louisiana		N	N	N	N	Y
Maine		N	N	N	N	Y
Maryland		N	N	N	Y	Y
Massachusetts		N	N	N	Y	Y
Michigan		N	N	N	N	Y
Minnesota		N	N	N	N	Y
Mississippi		N	N	N	Y	Y
Missouri		N	N	N	Y	Y
Montana		N	N	N	Y	Y
Nebraska		N	N	N	Y/N	Y
Nevada		N	N	N	Y	Y
New Hampshire		N	N	N	Y	Y
New Jersey		N	N	N	N	Y
New Mexico		N	N	N	Y	Y
New York		N	N	N	N	Y
North Carolina		N	N	N	Y	Y
North Dakota		N	N	N	Y	Y
Ohio		N	N	N	N	Y
Oklahoma		N	N	N	Y	Y
Oregon		N	N	N	Y	Y
Pennsylvania		N	N	N	Y	Y
Rhode Island		N	N	N	Y	Y
South Carolina		N	N	N	Y	Y
South Dakota		N	N	N	Y	Y

	Regulations & Statutes Date		Regulated		Registered/Licensed		Reporting		Supervision		Comments
Tennessee			N		N		N		Y		Y
Texas			N		N		N		Y		Y
Utah			N		N		N		N		Y
Vermont			N		N		N		N		Y
Virginia			N		N		N		Y		Y
Washington			N		N		N		Y		Y
West Virginia			N		N		N		Y		Y
Wisconsin			N		N		N		Y		Y
Wyoming			N		N		N		N		Y

Alabama	<p>Administrative Code 625-X-2-01(e)(1) states: Aids/unlicensed support personnel are required to be registered on official forms as approved by the board by employers and updated annually. (forms not available online)</p> <p><b>Supervision:</b> "direct on-site" (no further definition)</p>
Alaska	<p><b>Supervision:</b> Alaska 12 AAC 54.815(d) states: The supervising occupational therapist or occupational therapy assistant shall provide continual on-site supervision of non-licensed personnel who are performing patient-related duties.</p> <p>Alaska 12 AAC 54.800(b) states: An occupational therapist may not supervise, in any combination, more than three aides, assistants, students, foreign-trained candidates, or permittees at the same time.</p>
Arizona	<p>Arizona OT Rule R4-43-402(b) states: An occupational therapy aide shall receive continuous supervision.</p> <p>"<b>Continuous supervision</b>" means the supervising occupational therapist is in the immediate area of the occupational therapy aide performing supportive services. "<b>Immediate area</b>" means an occupational therapist is on the same floor and within 80 feet of an occupational therapy aide providing services to an occupational therapy patient. (Arizona OT Rule R4-43-101(11b) and (4)).</p>
Arkansas	<p>Arkansas Medical Practices Acts &amp; Regulations, Regulation 6.3(c) states: Any duties assigned to an occupational therapy aide must be determined and appropriately supervised on-site, in-sight daily by a licensed occupational therapist or occupational therapy assistant..."</p> <p>Direct client related duties shall require continuous visual supervision by the occupational therapist or the occupational therapy assistant.</p> <p>Arkansas Medical Practices Acts &amp; Regulations, Regulation 6.3(e) states: Direct client related services provided solely by an occupational therapy aide/tech without on-site, in-sight continuous visual supervision by a licensed occupational therapist or an occupational therapy assistant cannot be billed as occupational therapy services.</p>
Colorado	Supervision is defined but is vague
Connecticut	The word "aide" cannot be found on Connecticut's web site or reg's/statutes.
D.C.	<p>D.C. Municipal Regulation 6309.4 states: An occupational therapist shall maintain immediate supervision of an occupational therapy aide except for activities of daily living skills where supervision may be general to maintain client privacy. D.C. Municipal Regulation 6310.9 states: An occupational therapy assistant may provide immediate supervision to an occupational therapy aide while the aide is discussing or assisting in the care and treatment of a client.</p> <p>"<b>Immediate supervision</b>" is defined as oversight of an individual through face-to-face observations and in physical proximity to the individual being supervised. (No further definition/clarification)</p>

Delaware	<p>The word "aide" cannot be found in Delaware's regs/statutes. A search of the web page shows the only reference to "aide" is in the application for licensure, under "Affidavit and Information Release".</p> <p>"4. I will abide by the Board's rules concerning supervision of aides and licensees. 5. If licensed as an Occupational Therapist, I will provide the required level of supervision to any aide or Occupational Therapy Assistant. I will complete all required logs and documentation of supervision."</p> <p>There are no Board rules available on the web site.</p>
Florida	<p>Florida Administrative Code 64B11-4.002(2) states: All delegated patient related tasks must be carried out under direct supervision, which means that the aide must be within the line of vision of the supervising occupational therapist or occupational therapy assistant.</p>
Georgia	<p>The word "aide" cannot be found on Georgia's web site or regs/statutes.</p>
Hawaii	<p>The word "aide" cannot be found on Hawaii's web site or regs/statutes.</p>
Idaho	<p>Idaho Administrative Code 24.06.01-011.02(a) states: An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide.</p> <p>Idaho Administrative Code 24.06.01-011.03 states: The total number of...non-licensed occupational therapy personnel (including... aides)... may not exceed five (5) without prior Board approval.</p> <p>Idaho Administrative Code 24.06.01-011.06(c) states: The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process.</p>
Illinois	<p>Illinois Administrative Code 1315.164(a) states: An aide in occupational therapy works under the direct on-site supervision of an occupational therapist and/or occupational therapy assistants.</p>
Indiana	<p>Indiana 844 IAC 10-6-2 states: An aide, with direct on-site supervision of a licensed occupational therapist or, when appropriate, a certified occupational therapy assistant, may provide direct patient service.</p>
Iowa	<p>The word "aide" cannot be found on Iowa's web site or regs/statutes.</p>



Kansas	<p>Kansas Administrative Regulation 100-54-10(a) states: Occupational therapy procedures delegated by an occupational therapist or occupational therapy assistant to an occupational therapy aide, occupational therapy technician, or occupational therapy paraprofessional shall be performed under the direct, on-site supervision of a licensed occupational therapist or occupational therapy assistant.</p> <p>With respect to aides registering with the Board, K.A.R. 100-54-9 states: Before an occupational therapist allows an occupational therapy assistant to work under the occupational therapist's direction, the occupational therapist shall inform the board of the following: (a) the name of each occupational therapy assistant who intends to work under the direction of that occupational therapist; (b) the occupational therapy assistant's place of employment; and (c) the address of the employer.</p>
Kentucky	Kentucky 2010 KAR 28:130, Section 4 states: (1) An occupational therapy aide shall provide supportive services only with face-to-face supervision from an OT/L or OTAVL. (2) The supervising OT/L or OTAVL shall be in direct verbal and visual contact with the occupational therapy aide, at all times, for all therapy-related activities.
Louisiana	The word "aide" cannot be found on Louisiana's web site or regs/statutes.
Maine	The word "aide" cannot be found on Maine's web site or regs/statutes.
Maryland	<p>Maryland Code 10-301(b)(3) states: ...an aide who supports the practice of occupational therapy or the practice of limited occupational therapy, if the aide: (i) Works only under the direct supervision of a licensed occupational therapist or occupational therapy assistant and subject to the occupational therapist's responsibility for supervision, as provided by this subtitle.</p> <p>"Direct supervision" means supervision provided on a face-to-face basis by a supervising therapist when delegated client-related tasks are performed.</p>
Massachusetts	Supervision is defined but is vague
Michigan	The word "aide" cannot be found on Michigan's web site or regs/statutes.
Minnesota	The word "aide" cannot be found on Minnesota's web site or regs/statutes.

<p>Mississippi Regulation 100.03(12) states: Occupational Therapy Aide means a person who is not licensed in the field of occupational therapy and who assists occupational therapists and occupational therapy assistants in the practice of occupational therapy under direct supervision.</p> <p>"Direct supervision" means the daily, direct, on-site contact at all times of a licensed occupational therapist or occupational therapy assistant when an occupational therapy aide assists in the delivery of patient care.</p> <p>Mississippi Regulation 109.02(3)(d) states: Documentation of all training specific to the aide's duties must be in the aide's file.</p> <p>Mississippi Regulation 109.02(4) states: The supervision/consultation requirements stated in these regulations are minimal. It is the professional responsibility and duty of the licensed occupational therapist to provide the occupational therapist assistant with more supervision if deemed necessary in the occupational therapist's professional judgment.</p>	<p>Mississippi</p>
<p>Missouri Regulation 20 CSR 2205-4.030(1) and (2) state: (1) An occupational therapist or occupational therapy assistant must provide direct supervision of an occupational therapy aide at all times. (2) When an occupational therapist or occupational therapy assistant delegates to an occupational therapy aide maintenance or restorative services to patients/clients, the occupational therapist or occupational therapy assistant must be in the immediate area and within audible and visual range of the patient/client and the occupational therapy aide.</p>	<p>Missouri</p>
<p>Montana Administrative Rule 24.165.501(6) states: Occupational therapy aides under 37-24-103, MCA, shall work under the direct supervision of a licensed occupational therapist or a certified occupational therapist assistant. Occupational therapy aides shall have no supervisory capacity. (No further definition/clarification)</p>	<p>Montana</p>
<p>Supervision is mentioned, but the level/type of supervision is not specified.</p>	<p>Nebraska</p>
<p>Nevada Revised Statute NRS 640A.230(2) states: A licensed occupational therapist shall directly supervise the work of any person who assists him or her as an aide or technician.</p> <p>Nevada Administrative Code 640A.275 states: The board interprets the term "directly supervise" to mean supervision of an occupational therapy aide or technician by a licensed occupational therapist who: (1) Is physically present on the premises at all times when the aide or technician is working with patients; (2) Provides personal instruction to the aide or technician on a regular basis; (3) Personally evaluates the work of the aide or technician on a regular basis, and (4) Sets forth detailed statements of the duties and responsibilities of the aide or technician.</p>	<p>Nevada</p>

New Hampshire	<p>New Hampshire Administrative Rule Occ 408.11(c) states: A licensee delegating supportive tasks to an individual not licensed by the board shall: (1) Directly supervise the unlicensed individual when that individual performs tasks of client care during the treatment of an occupational therapy client; and (2) Indirectly supervise the unlicensed individual at all other times.</p> <p>New Hampshire Administrative Rule Occ 301.04 states: "<b>Direct supervision</b>" means supervision through direct and continuous observation of the activities of the person being supervised.</p>
New Jersey	<p>The word "aide" cannot be found on New Jersey's web site or regs/statutes.</p>
New Mexico	<p>New Mexico Administrative Code 16.15.3.8(j) states: The occupational therapist (OT) and the occupational therapy assistant (OTA) shall provide direct supervision to all occupational therapy aides/technicians.</p> <p>New Mexico Administrative Code 16.15.3.9(a) states: "<b>Direct supervision</b>" means a minimum of daily direct contact at the site of work with the licensed supervisor physically present within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. The occupational therapist (OT) and the occupational therapy assistant (OTA) shall provide direct supervision to all occupational therapy aides/technicians.</p>
New York	<p>Aides are not mentioned in New York's Rules or Statutes. However, I found this in the "Practice Issues" section of their FAQ's.</p> <p>May I use an "aide" to provide occupational therapy services?</p> <p>Answer: New York State law restricts the practice of occupational therapy to licensed professionals. Individuals who are not licensed may not provide occupational therapy services. People who are employed to assist occupational therapists in such activities as cleaning equipment, preparing a room for therapy, or performing secretarial duties should not be referred to as "occupational therapy aides" as this term may be misleading to the public.</p>
North Carolina	<p>North Carolina refers to aides as "unlicensed personnel" in North Carolina Rule 38.0103(21)(c) states: "Direct supervision" means the Occupational Therapy supervisor must be within audible and visual range of the client and unlicensed personnel and available for immediate physical intervention. Direct supervision is required for unlicensed personnel.</p>
North Dakota	<p>North Dakota statute 43-40-01.3 states: "Occupational therapy aide" means an unlicensed person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant in accordance with rules adopted by the board. (No further definition/clarification)</p>
Ohio	<p>Ohio refers to aides as "unlicensed personnel" in Ohio Code 4755-7-02(D). Unlicensed personnel primarily perform non-client related tasks.</p>

Oklahoma	<p>Oklahoma Rule 435:30-1-15(3) states: Direct on-site supervision will be provided by the Occupational Therapist or Occupational Therapy Assistant for aides/technicians providing patient care.</p> <p>Oklahoma Rule 435:30-1-2 states: "Direct supervision" means personal supervision and specific delineation of tasks and responsibilities by an Oklahoma licensed occupational therapist and shall include the responsibility for personally reviewing and interpreting the results of any habilitative or rehabilitative procedures conducted by the supervisee. It is the responsibility of the Oklahoma licensed occupational therapist to be onsite during treatment to ensure that the supervisee does not perform duties for which he is not trained.</p>
Oregon	<p>Oregon Administrative Rule 339-010-0055(2) states: An occupational therapist or occupational therapy assistant may supervise the aide. When the aide is performing treatment related tasks, the supervising occupational therapy practitioner must be within sight or earshot of the aide, and must be immediately available at all times to provide in-person direction, assistance, advice, or instruction to the aide.</p>
Pennsylvania	<p>Unlicensed personnel primarily perform non-client related tasks.</p>
Rhode Island	<p>Rhode Island Rule 5.5.8 states: An occupational therapy aide is a worker who is trained on the job. A licensed occupational therapist or licensed occupational therapy assistant using occupational therapy aide personnel to assist with the provision of occupational therapy services must provide close supervision in order to protect the health and welfare of the consumer. (No further definition/clarification)</p>
South Carolina	<p>South Carolina Law 40-36-20(8) states: "Occupational therapy aide" means a person who has received on-the-job training in occupational therapy and is employed in an occupational therapy setting under the direct on-site supervision of a licensed occupational therapist or licensed occupational therapy assistant.</p> <p>South Carolina Law 40-36-20(4) states: "Direct supervision" means personal, daily supervision, and specific delineation of tasks and responsibilities by an occupational therapist and includes the responsibility for personally reviewing and interpreting the results of a supervisee on a daily basis.</p>
South Dakota	<p>South Dakota Rule 20:64:01:01(2) states: "Direct supervision," the physical presence of an occupational therapist or occupational therapy assistant in the immediate room when remediative tasks are being performed by an occupational therapy aide</p>
Tennessee	<p>Tennessee refers to aides as "unlicensed personnel" in Tennessee Statute 63-13-103(19).</p> <p>Tennessee Rule 1150-02-.10(4)(a) states: There shall be close supervision with daily, direct contact at site of treatment, which demands the physical presence of a licensed physician, Occupational Therapist or Occupational Therapy Assistant, whenever the unlicensed person assists in the practice of Occupational Therapy.</p>

Texas	Texas Rule 373.1(b) states: Close Personal Supervision implies direct, on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the patient. This type of supervision is required for non-licensed personnel providing support services to the occupational therapy practitioners.
Utah	The word "aide" cannot be found on Utah's web site or regs/statutes.
Vermont	The word "aide" cannot be found on Vermont's web site or regs/statutes.
Virginia	The word "aide" cannot be found on Virginia's web site or regs/statutes. Supervision of unlicensed personnel is defined but is vague.
Washington	<p>Washington Administrative Code 246-847-135(3) states: Occupational therapy aides must be professionally supervised and trained by an occupational therapist or an occupational therapy assistant licensed in the state of Washington. Professional supervision must include documented supervision and training.</p> <p>Washington Administrative Code 246-847-010(11) states: "Professional supervision" of an occupational therapy aide as described in RCW 18.59.020(5) means in-person contact at the treatment site by an occupational therapist or occupational therapy assistant licensed in the state of Washington. When client related tasks are provided by an occupational therapy aide more than once a week, professional supervision must occur at least weekly. When client related tasks are provided by an occupational therapy aide once a week or less, professional supervision must occur at least once every two weeks.</p>
West Virginia	<p>West Virginia Statute 30-28-4(f)(1) states: The occupational therapy aide functions under the direct continuous supervision of either the occupational therapist or the occupational therapy assistant that is under the general supervision of the occupational therapist.</p> <p>West Virginia Rule 13-1-2.2.8.b states: "Direct Continuous Supervision" means that the Occupational Therapy supervisor is physically present and in direct line of sight of aides, and is initially required for occupational therapy students.</p>
Wisconsin	Wisconsin Administrative Code OT 4.05(1) and (2) state: (1) An occupational therapist or occupational therapy assistant must provide direct supervision of non-licensed personnel at all times. Direct supervision requires that the supervising occupational therapist or occupational therapy assistant be on premises and available to assist. (2) When an occupational therapist or occupational therapy assistant delegates to non-licensed personnel maintenance or restorative services to clients, the occupational therapist or occupational therapy assistant must be in the immediate area and within audible and visual range of the client and the non-licensed personnel.
Wyoming	The word "aide" cannot be found on Wyoming's web site or regs/statutes.



Physical Therapy Board of California

STATE AND CONSUMER SERVICES AGENCY - GOVERNOR EDMUND G. BROWN JR.

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## The Law & Regulation Governing Physical Therapy Aides

### **Business and Professions Code Section 2630. License Required – Exceptions**

It is unlawful for any person or persons to practice, or offer to practice, physical therapy in this state for compensation received or expected, or to hold himself or herself out as a physical therapist, unless at the time of so doing the person holds a valid, unexpired, and unrevoked license issued under this chapter.

Nothing in this section shall restrict the activities authorized by their licenses on the part of any persons licensed under this code or any initiative act, or the activities authorized to be performed pursuant to Article 4.5 (commencing with Section 2655) or Chapter 7.7 (commencing with Section 3500).

A physical therapist licensed pursuant to this chapter may utilize the services of one aide engaged in patient-related tasks to assist the physical therapist in his or her practice of physical therapy. "Patient-related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient-related tasks. "Non-patient-related task" means a task related to observation of the patient, transport of the patient, physical support only during gait or transfer training, housekeeping duties, clerical duties, and similar functions. The aide shall at all times be under the orders, direction, and immediate supervision of the physical therapist. Nothing in this section shall authorize an aide to independently perform physical therapy or any physical therapy procedure. The board shall adopt regulations that set forth the standards and requirements for the orders, direction, and immediate supervision of an aide by a physical therapist. The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as, and in proximity to, the location where the aide is performing patient-related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient-related tasks are provided to a patient by an aide, the supervising physical therapist shall, at some point during the treatment day, provide direct service to the patient as treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and shall correspondingly document the patient's record. The administration of massage, external baths, or normal exercise not a part of a physical therapy treatment shall not be prohibited by this section.



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### **Title 16, California Code of Regulations Section 1399 Requirements for Use of Aides**

A physical therapy aide is an unlicensed person who assists a physical therapist and may be utilized by a physical therapist in his or her practice by performing non-patient related tasks, or by performing patient related tasks. (a) As used in these regulations: (1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient related tasks as defined below. (2) A "non-patient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer training, housekeeping duties, clerical duties and similar functions. (b) "Under the orders, direction and immediate supervision" means: (1) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. The evaluation shall be documented in the patient's record. (2) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks. (3) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while he or she is on duty. (4) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as and in immediate proximity to the location where the aide is performing patient related tasks, and shall be readily available at all times to provide advice or instruction to the aide. When patient related tasks are provided a patient by an aide the supervising physical therapist shall at some point during the treatment day provide direct service to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress, and so document in the patient's record. (5) The physical therapist shall perform periodic re-evaluation of the patient as necessary and make adjustments in the patient's treatment program. The re-evaluation shall be documented in the patient's record. (6) The supervising physical therapist shall countersign with their first initial and last name, and date all entries in the patient's record, on the same day as patient related tasks were provided by the aide. Note: Authority cited: Section 2615, Business and Professions Code. Reference: Section 2630, Business and Professions Code. History: (1.) Amendment of subsection (b) filed 3-20-78, Register 78, No. 12. (2.) Amendment filed 8-13-81, Register 81, No. 33. (3.) Amendment of subsections (b)(1), (b)(2), (b)(4) and (b)(5) and new subsection (b)(6) filed 10-21-94, Register 94, No. 42.



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# THE LAWS AND REGULATIONS GOVERNING PHYSICAL THERAPIST ASSISTANT STUDENTS AND INTERNS

## Business and Professions Codes

### 2655.75. Authorization for Assistance in Physical Therapy by Student

Nothing in this chapter shall be construed to prevent a regularly matriculated student undertaking a course of instruction in an approved physical therapist assistant education program or a student enrolled in a program of supervised clinical training under the direction of an approved physical therapist assistant education program pursuant to Section 2655.9, as part of his or her course of study, from performing physical therapy techniques in preparing the student to be approved to assist a physical therapist in his or her practice of physical therapy.

## Title 16, California Code of Regulations

**1398.52. Identification and Supervision of Physical Therapist Assistant Students and Interns Defined** (a) A physical therapist assistant student is an unlicensed person rendering physical therapy services as a part of academic training pursuant to section 2655.75 of the Code and shall only be identified as a "physical therapist assistant student." A person who has completed the required academic coursework may be identified as a "physical therapist assistant intern" when rendering physical therapy services. When rendering physical therapy services, the required identification shall be clearly visible and include his or her name and working title in at least 18-point type. (b) The physical therapist assistant student or intern shall be supervised by a physical therapist supervisor. A physical therapist assistant under the supervision of a physical therapist supervisor may perform as a clinical instructor of the physical therapist assistant student or intern when rendering physical therapy services. (c) A physical therapist supervisor shall provide on site supervision of the assigned patient care rendered by the physical therapist assistant student or intern. (d) The physical therapist assistant student or intern shall document each treatment in the patient record, along with his or her signature. The clinical instructor shall countersign with his or her first initial and last name in the patient's record on the same day as patient related tasks were provided by the physical therapist assistant student or intern. The supervising physical therapist shall conduct a weekly case conference and document it in the patient record.

Note: Authority cited: Sections 2615, Business and Professions Code. Reference: Sections 2655.9 and 2655.75, Business and Professions Code.

#### HISTORY

1. New section filed 12-23-2002; operative 1-22-2003 (Register 2002, No. 52).





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### CLARIFICATION OF SUPERVISORY RESPONSIBILITIES OF THE PHYSICAL THERAPIST WHEN SUPERVISING A PHYSICAL THERAPY AIDE

How is "continuous and immediate" and "in close proximity" interpreted functionally in reference to supervision of the physical therapy aide by the physical therapist?

To ensure a physical therapist is providing continuous and immediate supervision of the physical therapy aide, it is essential for the supervising physical therapist to be in close proximity to the physical therapy aide performing patient related tasks, and the supervising physical therapist be readily available at ALL times to provide advice or instruction to the physical therapy aide.

The following definitions provide a clearer picture of what is meant by continuous, immediate supervision in proximity to the location where the physical therapy aide is performing patient related tasks.

Continuous: Uninterrupted, unceasing

Immediate: Occurring at once; without delay; instant

Supervision: To look over, to see, to direct

Proximity: Nearness, closeness, the fact of being near

Readily: Promptly

Available: Accessible for use, at hand

Therefore, in order to provide direction to the physical therapy aide, the supervising physical therapist would have to be near or close enough to provide advice or instruction instantly and without delay. While this may not require sharing the same treatment room with the physical therapy aide it does require the supervising physical therapist to be within an audible range that would ensure the instant presence of the supervising physical therapist. It is the sole responsibility of the physical therapist to ensure the safety of the patient and the quality of care rendered. And, since the Physical Therapy Board of California licenses the physical therapist, not the physical therapy aide, it is the physical therapist that is held accountable if professional judgment is compromised.

*Adopted by the Practice Issues Committee on May 9, 2002*

Note: This document is not a declaratory opinion of the Physical Therapy Board of California

## Proposed Regulations MODIFIED TEXT

The Physical Therapy Board of California proposes to amend Title 16 of the California Code of Regulations as follows:

**Changes to the originally proposed text are shown in double underline and double strikeout.**

### **(1) Amend Article 4, section 1398.44: Adequate Supervision Defined**

~~A licensed physical therapist shall at all times be responsible for all physical therapy services provided by the physical therapist assistant. The supervising physical therapist has continuing responsibility to follow the progress of each patient, provide direct care to the patient and to assure that the physical therapist assistant does not function autonomously. Adequate supervision shall include all of the following:~~

~~(a) The supervising physical therapist shall be readily available in person or by telecommunication to the physical therapist assistant at all times while the physical therapist assistant is treating patients. The supervising physical therapist shall provide periodic on-site supervision and observation of the assigned patient care rendered by the physical therapist assistant.~~

~~(b) The supervising physical therapist shall initially evaluate each patient and document in the patient record, along with his or her signature, the evaluation and when the patient is to be reevaluated.~~

~~(c) The supervising physical therapist shall formulate and document in each patient's record, along with his or her signature, the treatment program goals and plan based upon the evaluation and any other information available to the supervising physical therapist. This information shall be communicated verbally, or in writing by the supervising physical therapist to the physical therapist assistant prior to initiation of treatment by the physical therapist assistant. The supervising physical therapist shall determine which elements of the treatment plan may be assigned to the physical therapist assistant. Assignment of these responsibilities must be commensurate with the qualifications, including experience, education and training, of the physical therapist assistant.~~

~~(d) The supervising physical therapist shall reevaluate the patient as previously determined, or more often if necessary, and modify the treatment, goals and plan as needed. The reevaluation shall include treatment to the patient by the supervising physical therapist. The reevaluation shall be documented and signed by the supervising physical therapist in the patient's record and shall reflect the patient's progress toward the treatment goals and when the next reevaluation shall be performed.~~

~~(e) The physical therapist assistant shall document each treatment in the patient record, along with his or her signature. The physical therapist assistant shall document in the patient record and notify the supervising physical therapist of any change in the patient's condition not consistent with planned progress or treatment goals. The change in condition necessitates a reevaluation by a supervising physical therapist before further treatment by the physical therapist assistant.~~

~~(f) Within seven (7) days of the care being provided by the physical therapist assistant, the supervising physical therapist shall review, cosign and date all documentation by the physical therapist assistant or conduct a weekly case conference and document it in the patient record. Cosigning by the supervising physical therapist indicates that the supervising physical therapist has read the documentation, and unless the supervising physical therapist indicates otherwise, he or she is in agreement with the contents of the documentation.~~

~~(g) There shall be a regularly scheduled and documented case conference between the supervising physical therapist and physical therapist assistant regarding the patient. The frequency of the conferences is to be determined by the supervising physical therapist based on the needs of the patient, the supervisory needs of the physical therapist assistant and shall be at least every thirty calendar days.~~

~~(h) The supervising physical therapist shall establish a discharge plan. At the time of discharge, or within 7 (seven) days thereafter, a supervising physical therapist shall document in the patient's record, along with his or her signature, the patient's response to treatment in the form of a reevaluation or discharge summary.~~

(a) "Adequate supervision" of a physical therapist assistant shall mean supervision that complies with this section. A physical therapist shall at all times be responsible for all physical therapy services provided by the physical therapist assistant and shall ensure that the physical therapist assistant does not function autonomously. The physical therapist has a continuing responsibility to follow the progress of each patient, and is responsible for determining which elements of a treatment plan may be assigned to a physical therapist assistant.

(b) A physical therapist who performs the initial evaluation of a patient shall be the physical therapist of record for that patient. The physical therapist of record shall remain as such until a reassignment of that patient to another physical therapist of record has occurred. The physical therapist of record shall ensure that a written system of transfer to the succeeding physical therapist exists.

(c) The physical therapist of record shall provide supervision and direction to the physical therapist assistant in the treatment of patients to whom the physical therapist assistant is providing care. The physical therapist assistant shall be able to identify, and communicate with, the physical therapist of record at all times during the treatment of a patient.

(d) A physical therapist assistant shall not:

(1) Perform measurement, data collection or care prior to the evaluation of the patient by the physical therapist or document patient evaluation and reevaluation

(2) Document patient evaluation and reevaluation

~~(2)~~ (3) Write a discharge summary

~~(3)~~ (4) Establish or change a plan of care

~~(4)~~ (5) Write progress reports to another health care professional, as distinguished from daily chart notes

~~(5)~~ (6) Be the sole physical therapy representative in any meeting with other health care professionals where the patient's plan of care is assessed or may be modified.

~~(6)~~ (7) Supervise a physical therapy aide performing patient-related tasks

~~(7)~~ (8) Provide treatment if the physical therapist assistant has any ownership interest or holds a management position in the physical therapy business where the care is being provided. For purposes of this section, "management position" shall mean a position that has control or influence over scheduling, hiring, or firing.

The prohibitions in subsection (d) above shall not prohibit a physical therapist assistant from collecting and documenting data, administering standard tests, or taking measurements related to patient status.

(e) The physical therapist assistant shall:

~~(1)~~ Notify the physical therapist of record and document in the patient record any change in the patient's condition not within the planned progress or treatment goals, and any change in the patient's general condition.

Note: Authority cited: Sections 2615, 2655.1 and 2655.92, Business and Professions Code. Reference: Section 2655.92, Business and Professions Code.

## **(2) Amend Article 7, Section 1399: Requirements for Use of Aides**

(a) A physical therapy aide is an unlicensed person who ~~assists a physical therapist and~~ may be utilized by a physical therapist in his or her practice by performing non-patient related tasks, or by performing patient related tasks ~~for the corrective rehabilitation or other treatment of a person.~~

(b) Prior to the aide providing patient related care, a physical therapist shall evaluate and document, the aide's competency level for performing the patient related task that the aide will provide in that setting. The record of competencies shall be made available to the board or any physical therapist utilizing that aide upon request.

~~(a)~~ (c) As used in these regulations:

(1) A "patient related task" means a physical therapy service rendered directly to the patient by an aide, excluding non-patient related tasks as defined below.

**(3) Move section 1399.85 from Article 12, Topical Medications, to Article 1, General Provisions, and assign it Section 1398.13: Patient Records**

~~1399.85.~~ 1398.13 Patient Records.

(a) A physical therapist shall document and sign in the patient record the following in accordance with subsection (c):

- (1) Examination and re-examination
- (2) Evaluation, ~~when the patient is to be reevaluated~~ and the reevaluation
- (3) Diagnosis
- (4) Prognosis and intervention
- (5) Treatment plan and modification of the plan of care
- (6) Each treatment provided by the physical therapist or a physical therapy aide
- (7) Discharge Summary

~~Each entry shall be dated and signed by the treating physical therapist. Adjacent to the treating physical therapist's signature or at least on every page if there are multiple entries on a single page shall be the printed or stamped name of the treating physical therapist.~~

(b) The physical therapist assistant shall document and sign in the patient record any treatment provided by that individual, in accordance with subsection (c).

(c) With respect to any care provided to the patient, the patient record shall indicate:  
(1) The date and nature of the service provided and  
(2) The name and title of any individual who provided such service, including the individual's role in that service. As used in this section, the term "service" does not include "non-patient related tasks" as defined in section 1399.

(d) The physical therapist shall ensure compliance with subsection (c).

(e) The requirements of this section are in addition to the requirements of the following sections:

- (1) 1398.37(d) [relating to physical therapist students and interns].
- (2) 1398.44(e)(1) [relating to physical therapist assistants]
- (3) 1398.52(d) [relating to physical therapist assistant students]
- (4) 1399.10 [relating to physical therapist license applicants]; and
- (5) 1399.12 [relating to physical therapist assistant license applicants].

(f) Electronic signatures are sufficient for purposes of this section.

Note: Authority cited: Section 2615, Business and Professions Code. Reference: Section 2620.7, Business and Professions Code.

(2) A "non-patient related task" means a task related to observation of the patient, transport of patients, physical support only during gait or transfer ~~training~~, housekeeping duties, clerical duties and similar functions.

~~(b)~~ (3) "Under the orders, direction and immediate supervision" means:

~~(1)~~ (A) Prior to the initiation of care, the physical therapist shall evaluate every patient prior to the performance of any patient related tasks by the aide. ~~The evaluation shall be documented in the patient's record.~~

~~(2)~~ (B) The physical therapist shall formulate and record in the patient's record a treatment program based upon the evaluation and any other information available to the physical therapist, and shall determine those patient related tasks which may be assigned to an aide. ~~The patient's record shall reflect those patient related tasks that were rendered by the aide, including the signature of the aide who performed those tasks.~~

~~(3)~~ (C) The physical therapist shall assign only those patient related tasks that can be safely and effectively performed by the aide. The supervising physical therapist shall be responsible at all times for the conduct of the aide while ~~he or she~~ the aide is ~~on duty~~ performing "patient related tasks" and "non-patient related tasks" as defined in this section.

~~(4)~~ (D) The physical therapist shall provide continuous and immediate supervision of the aide. The physical therapist shall be in the same facility as the aide and in immediate proximity to the location where the aide is performing patient related tasks, ~~and~~ The physical therapist shall be readily available at all times to provide immediate advice, or instruction to the aide or intervention in the care of the patient. When patient related tasks are provided to a patient by an aide the supervising physical therapist shall at some point during the treatment day provide direct service to the patient as treatment for the patient's condition or to further evaluate and monitor the patient's progress, ~~and so document in the patient's record.~~

~~(5)~~ (E) The physical therapist shall perform periodic re-evaluation of the patient as necessary and make adjustments in the patient's treatment program. The re-evaluation shall be documented in the patient's record.

~~(6)~~ The supervising physical therapist shall countersign with their first initial and last name, and date all entries in the patient's record, on the same day as patient related tasks were provided by the aide.

Note: Authority cited: Section 2615, Business and Professions Code. Reference: Section 2630, Business and Professions Code.



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## **PRACTICE COMMITTEE MEETING MINUTES**

**Tuesday, October 19, 2010**

### Committee Members Present

Linda Florey, Board Member  
Richard Bookwalter  
Mary Kay Gallagher  
Didi Olson  
Sharon Pavlovich

### Board Staff Present

Heather Martin, Executive Officer

### Committee Members Absent

Luella Grangaard  
Barbara Rodrigues

#### **A. Call to order, roll call, establishment of a quorum.**

At 1:05 pm, Board Member Linda Florey called the meeting called to order.

#### **B. Introductions of Committee members**

The Committee members introduced themselves.

#### **C. Review of Committee Member Roster**

The Committee members reviewed a roster containing their contact information and provided the information to Heather Martin; who will disseminate at the next meeting.

#### **D. Review and discussion of Practice Committee's Roles and Responsibilities and consideration of recommending changes to the Board.**

The committee members discussed the Roles and Responsibilities document previously adopted by the Practice Committee, August 2006. Due to the current composition of the Committee being so new, there were no recommended changes at this time. However, since the Committee may want to recommend modifications in the future, it was requested that the item be kept on the agenda as an on-going agenda item.

#### **E. Consideration of board-approved legislative proposal to amend definition of Occupational Therapy, contained in Business and Professions Code Section 2570.2(k), and recommendation to the Board of possible changes.**

The committee members were provided several items, including proposed amendments to Business and Professions Code Section 2570.2(k) that was approved by the Board at its July 2010 meeting, a memo from the American Occupational Therapy Association (AOTA) regarding a draft definition of occupational therapy practice for the AOTA Model Practice Act that it is currently under review, and AOTA's Occupational Therapy Research Agenda.

Ms. Florey expressed concern with amending Business and Professions Code Section 2570.2(k), as once legislation is proposed, it opens up the section for input by other healthcare practitioners. She also expressed concern with striking "individuals referred for occupational therapy services subsequent to diagnosis of disease or disorder..."

The committee members raised different concerns regarding the amendments that were approved by the Board.

Ms. Lora Woo provided the public comment that the Board's mission is to protect the public and that this language, as written doesn't appear to do so. She further commented that the "research" projects are provided oversight by a University's Institutional Research Board and the Accreditation Council for Occupational Therapy Education (ACOT) provides oversight of faculty of occupational therapy educational programs, thus the Board didn't need to provide an oversight role in these areas. Mr. Bookwalter commented that he didn't agree. He further expanded that if controlled research was performed in a clinic where he was the clinical supervisor, he would be responsible in the event of harm to any patient in that clinical trial. He posed the question that, if he wasn't licensed and there was patient harm, then who would be held accountable?

The committee continued the discussion regarding the legislative proposal, the Board's intent and the relevance of documents provided.

- Linda Florey moved to recommend that the Board table its legislative proposal to amend BPC 2570.2 to allow the Practice Committee more time to review the language and bring back a recommendation to the Board's March meeting.
- Didi Olson seconded the motion.
- The motion passed unanimously.

Recommend the Board to table legislative proposal amending BPC Section 2570.2 to allow the Practice Committee more time to review AOTA's draft "practice" definition and bring back recommendation to March Board meeting.

#### **J. Selection of 2011 meeting dates.**

The committee members selected the following dates for their upcoming meetings: January 27<sup>th</sup>, February 17<sup>th</sup>, and April 7<sup>th</sup>. Committee members agreed



to hold the next couple of meetings at Rancho Los Amigos National Rehabilitation Center.

In order to alleviate the cost/time constraints of meeting in person, Ms. Martin indicated she would look into holding meetings via teleconference or, if possible, via video-conference.

**F. Discussion of specialized occupational therapy skills acquired post entry-level (e.g., wound care, lymphedema treatment, assistive technology, etc.,) recognition of various certification organizations, and the Board's role in monitoring these areas.**

Ms. Martin gave an overview regarding why this issue was on the agenda. Mr. Bookwalter commented that, personally, he would like to see the advanced practice approval requirement be eliminated entirely. Ms. Florey agreed and that stated that she didn't want to see additional areas of practice added as requiring advanced practice approval.

- Richard Bookwalter moved to not monitor any additional practice areas nor recognize any certification organizations.
- Linda Florey seconded the motion.
- The motion passed unanimously.

**G. Discussion and consideration of amending Section 4161, California Code of Regulations, Continuing Competency.**

The committee discussed the language as presented and made several amendments.

- Linda Florey moved to accept the language as amended and recommend to the board that the language move forward in the process.
- Richard Bookwalter seconded the motion.
- The motion passed unanimously.

**H. Discussion of Section 4184, California Code of Regulations, Delegation of Tasks to Aides and Section 2570.2(a), Business and Professions Code, regarding responsibility for documentation.**

Due to time constraints, it was decided that this item would be discussed at the next meeting.

**I. Discussion and consideration of prohibition of teaching continuing education courses when a practitioner's license is on probation.**

Due to time constraints, it was decided that this item would be discussed at the next meeting.

**J. Public comment on items not on agenda.**

No additional public comment was provided.

**K. Adjournment**

The meeting adjourned at 3:40 pm.



## PRACTICE COMMITTEE MEETING MINUTES

Thursday, January 27, 2011

### Committee Members Present

Linda Florey, Board Member  
Mary Kay Gallagher  
Didi Olson  
Sharon Pavlovich  
Christine Wietlisbach

### Board Staff Present

Heather Martin, Executive Officer

### Committee Members Absent

Richard Bookwalter  
Barbara Rodrigues

### **A. Call to order, roll call, establishment of a quorum.**

At 2:00 pm, Board Member Linda Florey called the meeting to order. After the roll call, it was determined that a quorum was established.

### **B. Approval of the October 19, 2010, Committee meeting minutes.**

- ❖ Mary Kay Gallagher moved to accept the October 19, 2010, Practice Committee Meeting Minutes as presented.
- ❖ Sharon Pavlovich seconded the motion.
- ❖ The motion passed unanimously. (Christine Wietlisbach abstained.)

### **C. Consideration of board-approved legislative proposal to amend definition of Occupational Therapy, contained in Business and Professions Code Section 2570.2(k), and recommendation to the Board of possible changes.**

Ms. Linda Florey referenced the meeting packet materials and summarized the issue as follows:

The legislative proposal to amend Business and Professions Code (BPC) Section 2570.2(k) was approved by the Board at the July 2010 meeting. On September 23, the American Occupational Therapy Association (AOTA) sent out a draft definition of 'occupational therapy practice' for inclusion in their Model Practice Act to various stakeholders for input. This, along with AOTA's paper "Occupational Therapy Research Agenda" was provided to the Practice Committee at its October 26, 2010, meeting for consideration and possible recommendation to the Board at its November 4, 2010, meeting.

At the November 4, 2010, meeting, Ms. Florey reported that the Practice Committee's recommendation was for the Board to table the legislative proposal to give the Practice Committee additional time to consider the issue. Due to legislative deadlines, the Board voted to move forward with the legislative proposal as approved in July, however, to give the Practice Committee additional time to vet the issue and bring back its recommendation to the March 3, 2011, Board meeting.

Ms. Didi Olson commented that, upon reviewing the Physical Therapy Practice Act, the definition of physical therapy appeared more general and not as specific as the proposed definition of occupational therapy.

Comments during the Committee's discussion included: There is risk to amending the practice act, including input and changes from other healing arts boards, the loss of control of the legislative amendment process and that the current definition doesn't address community-based practice, which is becoming more prevalent/wide-spread.

Mr. Shawn Phipps, President, Occupational Therapy Association of California, stated that he applauds the Board's efforts to come up with language that is clearer than the existing language. However, he expressed concern with 'opening up' the practice act, and stated that there is risk inherent with any legislative proposal. Mr. Phipps also recommended awaiting the approval of AOTA's model practice act definition by the Representative Assembly in April 2011 as the model definition used nationwide.

Ms. Christine Wietlisbach clarified that the definitions included in AOTA's model practice act are available for use by the states, but not all states would choose to amend their practice act to incorporate the new definition.

Ms. Florey summarized the committee's options as recommending the Board to:

- 1) Not amend the definition of occupational therapy (and leave as is),
- 2) Blend the legislative proposal to include elements of the current proposal and some of AOTA's proposed language, or
- 3) Leave the language as approved by the Board in July.

- ❖ Christine Wietlisbach moved to recommend the Board keep the legislative proposal as written.
- ❖ Linda Florey seconded the motion.

After further discussion, Ms. Wietlisbach withdrew her motion.

- ❖ Didi Olson moved to recommend the Board table the legislative proposal.
- ❖ There was no second.

Further discussion ensued regarding the Committee's recommendation to the Board. The following amendments to the legislative proposal resulted:

- Strike the first sentence in BPC 2570.2 and replace with the first paragraph in AOTA's model language and add "and maintaining" before health and wellness, in the model language.
  - In the second sentence of BPC 2570.2, strike "services" and change "encompass" to "encompasses."
  - In the proposed new subsection (2), strike the verbiage beginning with "The term "client" is used ... " through the end of the new subsection c, with the sentence ending with, "...within the context of a population (e.g., an organization, a community)."
- ❖ Christine Wietlisbach moved to recommend the Board amend the legislative proposal as edited by the Committee.
  - ❖ Didi Olson seconded the motion.
  - ❖ The motion passed unanimously.

Thus, the Committee is recommending the legislative proposal read as follows:

**Amend Business & Professions Code Section 2570.2(k)**

(k) "~~Practice of~~ Occupational therapy" means the therapeutic use of ~~purposeful and meaningful goal directed~~ everyday life activities (occupations) with individuals, groups, or populations to address participation and function in roles and situations in home, school, workplace, community and other settings. Occupational therapy services are provided for habilitation, rehabilitation, promoting and maintaining health and wellness to those who have or are at risk for developing an illness, injury, disease, disorder, condition, impairment, disability, activity limitation or participation restriction. Occupational therapy addresses the physical, cognitive, psychosocial, sensory, and other aspects of performance in a variety of contexts to support engagement in everyday life activities that affect physical and mental health, which engage the individual's body and mind in meaningful, organized, and self-directed actions that maximize independence, prevent or minimize disability, and promote or maintain health, well-being, and quality of life. Occupational therapy ~~services~~ encompasses ~~research, education of students, occupational therapy assessment, treatment, education of, and consultation with, individuals who have been referred for occupational therapy services subsequent to diagnosis of disease or disorder (or who are receiving occupational therapy services as part of an Individualized Education Plan (IEP) pursuant to the federal Individuals with Disabilities Education Act (IDEA)).~~ individuals, groups, programs, organizations, or communities.

(1) Occupational therapy assessment identifies performance abilities and limitations that are necessary for self-maintenance, learning, work, and other similar meaningful activities. Occupational therapy treatment is focused on developing, improving, or restoring functional daily living skills, compensating for and preventing dysfunction, or minimizing disability. Occupational therapy techniques that are used for treatment involve teaching activities of daily living (excluding speech-language skills); designing or fabricating selective temporary orthotic devices, and applying or training in the use of assistive technology or orthotic and prosthetic devices excluding gait training).

Occupational therapy consultation provides expert advice to enhance function and quality of life. Consultation or treatment may involve modification of tasks or environments to allow an individual to achieve maximum independence. Services are provided individually, or in groups, or through social groups.

(2) The licensed occupational therapist or occupational therapy assistant may assume a variety of roles in their profession, including but not limited to, clinician, supervisor of occupational therapy students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, continuing education instructor and educator of consumers/clients.

~~The term "client" is used to name the entity that receives occupational therapy services. Clients may be categorized as:~~

~~a) individuals, including individuals who may be involved in supporting or caring for the client (i.e. caregiver, teacher, parent, employer, spouse);~~

~~b) individuals within the context of a group (e.g., a family, a class); or~~

~~c) individuals within the context of a population (e.g., an organization, a community).~~

(l) "Hand therapy" is the art and science of rehabilitation of the hand, wrist, and forearm requiring comprehensive knowledge of the upper extremity and specialized skills in assessment and treatment to prevent dysfunction, restore function, or reverse the advancement of pathology. This definition is not intended to prevent an occupational therapist practicing hand therapy from providing other occupational therapy services authorized under this act in conjunction with hand therapy.

(m) "Physical agent modalities" means techniques that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. These techniques are used as adjunctive methods in conjunction with, or in immediate preparation for, occupational therapy services.

#### **D. Discussion of Section 4184, California Code of Regulations, Delegation of Tasks to Aides and Section 2570.2(a), Business and Professions Code, regarding responsibility for documentation.**

Ms. Martin referenced the meeting materials and presented the issue of inconsistency in the statute and the regulations regarding the responsibility for documenting services provided by aides. The Committee discussed both sections and remarked that the supervising occupational therapist ultimately bears the responsibility for all occupational services, including the documentation. Thus, 'co-signature' of an aides' documentation is not appropriate.

- ❖ Linda Florey moved to recommend to the Board to strike subsection (d) from Section 4184, Delegation of Tasks to Aides.
- ❖ Christine Wietlisbach seconded the motion.
- ❖ The motion passed unanimously.

**E. Discussion and overview of process to review advanced practice post-professional educational courses.**

Ms. Martin explained that one of the responsibilities of the Practice Committee members is to review requests for approval of post-professional educational courses submitted by continuing education providers. However, only two current Committee members, Mary Kay Gallagher and Christine Wietlisbach, have previously reviewed post-professional educational courses. Thus, Ms. Martin asked the Committee members to discuss the course review process. This would include the review of courses contained in the meeting materials with oversight and direction provided by Ms. Gallagher and Ms. Wietlisbach.

**F. Discussion and consideration of prohibition of teaching continuing education courses when a practitioner's license is on probation.**

Ms. Martin reported that this item was delegated to the Practice Committee by the Board and asked the Committee members to discuss whether they felt it was appropriate for a practitioner whose license has been placed on probation to continue to teach courses.

The Committee discussed the issue, including the Board of Behavioral Sciences' (BBS) regulatory requirements for continuing education providers and BBS' Disciplinary Guidelines which prohibits a probationer from being an instructor in any continuing education courses.

Comments during the Committee's discussion included: Being on probation restricts a practitioner's ability to work; practitioners are placed on probation for egregious violations of the practice act; probation is an opportunity instead of having license revoked.

The Committee felt they didn't have enough information to make a recommendation to the Board and requested information from other boards. Ms. Martin agreed to review the following healing arts boards' information, and bring back anything pertinent: Physical Therapy, Speech, Registered Nurses, and Licensed Vocational Nurses.

**G. Discussion and consideration of adding new Business and Professions Code Section requiring registration of occupational therapy aides.**

Due to time constraints, this item was tabled for the next committee meeting. Ms. Martin provided two handouts that indicated a review of other state licensing boards' laws and regulations regarding the use of aides and supervision of aides. Ms. Martin indicated that these documents would be included in the materials at the next meeting.

In deference to members of the public in attendance who wanted to address this issue, the Committee accepted public comments.

Mr. Phipps expressed concern with the Board pursuing registration of aides. He indicated he felt that registration wasn't necessary since Medicare/Medi-Cal didn't reimburse for services provided by aides, the use of aides would dwindle. He also indicated that the registration of aides would complicate matters for the board and that, given the current fiscal climate, he wasn't sure that the issue was the best use of the Board's resources.

After further discussion, the Committee asked that the Physical Therapy Board's recently amended supervision regulations regarding the use of aides be made available for review at the next meeting.

**H. Selection of future 2011 meeting dates.**

Due to time constraints, this item was tabled for the next committee meeting.

**I. Agenda items for February 17, 2011, meeting.**

No additional items were suggested.

**J. Public comment on items not on agenda.**

No additional public comment was provided.

**K. Adjournment.**

The meeting adjourned at 4:20pm.



## **AGENDA ITEM 8**

### **ENFORCEMENT COMMITTEE REPORT.**

The following items were reviewed by the Committee:

- Enforcement Committee Roles & Responsibilities
- Course provider qualifications for various health boards
- Draft Disciplinary Guidelines

## ENFORCEMENT COMMITTEE

### Roles & Responsibilities

1. Review and provide recommendations to the Board on enforcement and discipline-related proposed regulatory amendments.
2. Review the *Disciplinary Guidelines* annually and provide recommendations to the Board on suggested amendments;
3. Develop and recommend to the Board enforcement-related policies (i.e. Complaint Disclosure, ...)
4. Review and provide recommendations to Board staff on applications for the Expert Witness Program;
5. Establish resource pool of Expert Witnesses to review medical records and Division of Investigation reports to determine whether the allegation has been substantiated.
6. Review and provide recommendations to Board staff on revisions to various applications and forms used by the Board;

Extract from Board ADMINISTRATIVE MANUAL

The purpose of the Enforcement Oversight Committee is to continually seek ways to improve the Board's enforcement activities, develop and review enforcement policies, review enforcement and discipline-related regulatory proposals, review enforcement and discipline-related forms, review and make recommendations regarding the Board's disciplinary guidelines and to assist in identifying situations where enforcement procedures might be improved.

***From Board of Behavioral Sciences' (BBS) regulations:***

**§1887.10. COURSE INSTRUCTOR QUALIFICATIONS**

(a) A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

(1) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;

(2) a master's or higher degree from an educational institution in an area related to the subject matter of the course;

(3) training, certification, or experience in teaching subject matter related to the subject matter of the course; or

(4) at least two years' experience in an area related to the subject matter of the course.

(b) During the period of time that any instructor has a healing arts license that is restricted pursuant to a disciplinary action in California or in any other state or territory, that instructor shall notify all approved continuing education providers for whom he or she provides instruction of such discipline before instruction begins or immediately upon notice of the decision, whichever occurs first.

**A condition for Probation from BBS' Disciplinary Guidelines:**

Instruction of Coursework Qualifying for Continuing Education Respondent shall not be an instructor of any coursework for continuing education credit required by any license issued by the Board.

***From Physical Therapy Board's (PTB) regulations:***

**§1399.96. Standards for Approved Providers.**

Before it may approve a provider, the approval agency shall require that the provider adhere to the following requirements:

- (a) Topics and subject matter for each course shall be pertinent to the practice of physical therapy as required by section 1399.92.
- (b) Instructors for each course shall be competent in the subject matter and shall be qualified by appropriate education, training, experience, scope of practice or licensure.
- (c) Each course shall have a syllabus that includes learning objectives, bibliography and either a schedule, for courses offered in-person, or an outline, for courses offered online.
- (d) Each course shall have written educational goals and specific learning objectives which are measurable and which serve as a basis for an evaluation of the effectiveness of the course.
- (e) When an approved provider works with others on the development, distribution and/or presentation of a continuing education course (joint sponsorship), there shall be procedures to identify and document the functions of each participating party.
- (f) Each approved provider shall periodically review its courses to ensure content quality and currency.
- (g) Each participant shall be given the opportunity to evaluate each course and offer feedback to the approved provider. The approved provider shall consider any such evaluations for the purpose of updating or revising courses.
- (h) Each approved provider has a procedure to respond to complaints.
- (i) Each approved provider provides services to all licensees without unlawful discrimination.
- (j) Each approved provider shall maintain records regarding course content and licensee attendance for a minimum of seven years.
- (k) Each approved provider and instructor shall disclose any financial interest in products recommended during a course.
- (l) Each approved provider shall provide a certificate of completion to attendees.
- (m) Each approved provider shall ensure that any information it disseminates publicizing its continuing education courses is true and not misleading. Such information shall include a statement with the name of the approval agency, that such agency may be contacted about any concerns, any approved provider identification number, and the number of hours for which the course has been approved.

NOTE: Authority: Sections 2615 and 2676, Business and Professions Code.

Reference: Section 2676 and 2684, Business and Professions Code.

***From Speech-Language Pathology and Audiology Board's (SLPAB) regulations:***

**§1399.160.10. COURSE INSTRUCTOR QUALIFICATIONS.**


A provider shall ensure that an instructor teaching a course has at least two of the following minimum qualifications:

- ~~1.~~ (a) a license, registration, or certificate in an area related to the subject matter of the course. The license, registration, or certificate shall be current, valid, and free from restrictions due to disciplinary action by this board or any other health care regulatory agency;
2. (b) a valid, current certification in the subject area issued by the American Speech-Language-Hearing Association or the American Board of Audiology;
3. (c) training, certification, or experience in teaching courses in the subject matter; or
4. (d) at least two years' experience in an area related to the subject matter of the course.

NOTE: Authority cited: Sections 2531.95 and 2532.6(a), Business and Professions Code.  
Reference: Section 2532.6(e), Business and Professions Code.

***From Board of Registered Nursing's (BRN) regulations:***

**§1454. Approved Providers**



(a) For the purpose of this Article, the title "approved provider" can only be used when an individual, partnership, corporation, association, organization, organized health care system, educational institution or governmental agency, having committed no act which would lead to disciplinary action pursuant to Section 1459.1, has submitted a provider application on forms supplied by the Board, remitted the appropriate fee and has been issued a provider number.

(b) An individual, partnership, corporation, association, organized health care system, governmental agency, educational institution and other organizations may be issued only one provider number; provided, however, that any autonomous entity within such organization may be issued one provider number.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

(1) refunds in cases of non-attendance

(2) time period for return of fees

(3) notification if course is cancelled.

(d) The approved provider is required to accept full responsibility for each and every course, including, but not limited to recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor qualifications. When two or more providers co-sponsor a course, only one provider number shall be used for that course and that provider must assume full responsibility for recordkeeping, advertising course content as related to Board standards, issuance of certificates and instructor (s') qualifications.

(e) Providers may not grant partial credit for continuing education.

(f) Approved providers shall keep the following records for a period of four years in one location within the State of California, or in a place approved by the Board:

(1) course outlines of each course given

(2) record of time and places each course given

(3) course instructor vitae or resumes

(4) name and license number of registered nurses taking any approved course and a record of any certificate issued to them.

(g) Approved providers must notify the Board, within thirty (30) days, of any changes in organizational structure of a provider and/or the person(s) responsible for the provider's continuing education course(s), including name and address changes.

(h) Provider approval is non-transferable.

(i) The Board shall audit records, courses, instructors and related activities of a provider.

Note: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2811.5, Business and Professions Code. History: 1. Repealer and new section filed 12-18-81; effective thirtieth day thereafter (Register 81, No. 51). 2. Amendment of subsection (a) filed 2-1-96; operative 3-2-96 (Register 96, No. 5).

***From Board of Vocational Nursing (BRN) regulations:***

**§2540.3. Course Provider Approval.**

(a) An individual applying for approval as a continuing education course provider must:

(1) Complete and submit an application form supplied by the Board entitled, "Application to be a Continuing Education Course Provider for Licensed Vocational Nurses" (Form 55A-40; 09/05), hereby incorporated by reference. (2) The content of all courses of continuing education must be relevant to the practice of nursing and must:

(A) Be related to the scientific knowledge and/or technical, manual skills required for the practice of vocational nursing, or

(B) Be related to direct and/or indirect patient/client care.

(C) Learning experiences are expected to enhance the knowledge of the vocational nurse at a level above that required for licensure.

(3) Submit one course offering for Board review prior to course provider approval. Include the following information for the course submitted for review: (A) Identifying information for the name, location and contact of the provider. (B) A description of the subject matter of the course as it relates to recent developments in the vocational nursing field or in any special area of vocational nursing practice, including course title; (C) The course objectives; (D) Method(s) of instruction; (E) Total number of hours in the course and the course location; (F) Methods of evaluation: 1. for instructor evaluation of student achievement of course objectives; and 2. for student evaluation of course content and course instructor. (G) Course instructor's qualifications, as specified in Section 2540.4. (b) The Board will issue approval to the provider. A provider will not be approved for more than a two-year period. Following approval by the Board within each two-year period, the provider may offer an unlimited number of continuing education courses.

(c) An approved provider shall have a written and published policy, available on request, which provides information on:

(1) refunds in cases of non-attendance

(2) time period for return of fees

(3) notification if course is canceled

(d) The approved provider is required to accept full responsibility for each and every course, including but not limited to recordkeeping, advertising course content, issuance of certificates and instructor qualifications.

(e) Approved providers shall keep the following records for a period of four years:

(1) course outlines of each course given

(2) record of dates and places each course is given



(3) instructor curriculum vitae or resumes

(4) names and license numbers of licensed vocational nurses and/or psychiatric technicians who take any course offered by the approved provider and a record of any certificate issued to them.

(f) Provider approval is non-transferable.

(g) Approved providers must notify the Board within 30 days of any changes in information that was submitted on the most recent approved application to the board.

(h) Approval of a licensed vocational nurse continuing education course provider may be withdrawn if the Board later discovers misrepresentation in an advertisement or in any information required by the Board in accordance with this Article.

Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.5, Business and Professions Code History: 1. Amendment of subsections (a)(4) and (c) filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9). 2. Amendment of subsection (a) filed 4-22-81; effective thirtieth day thereafter (Register 81, No. 17). 3. Amendment filed 11-16-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 47). 4. Amendment of section heading and section filed 5-4-2007; operative 6-3-2007 (Register 2007, No. 18).

#### **§2540.4. Course Instructors Qualifications.**

Instructors of continuing education courses shall meet two of the following: (a) Completion within two years preceding course approval of specialized training in the subject matter of the course; (b) Completion of academic studies related to the subject matter of the course within two years of course approval; (c) Experience teaching a course with similar subject matter content within the previous two years; (d) Six months of work experience in the subject matter of the course within the previous three years; or (e) Experience in developing academic courses within two years preceding course approval. Note: Authority cited: Section 2854, Business and Professions Code. Reference: Section 2892.5, Business and Professions Code. History: 1. Amendment filed 3-3-78; effective thirtieth day thereafter (Register 78, No. 9). 2. Amendment filed 11-16-83; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 83, No. 47). 3. Amendment of section heading, first paragraph and subsection (d) filed 5-4-2007; operative 6-3-2007 (Register 2007, No. 18).

# California Board of Occupational Therapy

## Specific Language

Changes to the proposed text are shown by ~~double-strikeout~~ for deleted text and double underline for new text.

Section 4144 of Division 39 of Title 16, Article 5 of the California Code of Regulations is amended to read:

### Article 5.5. ~~Uniform Standards Related to Substance Abuse and Disciplinary Guidelines Standards~~ Related to Denial, Discipline, and Reinstatement of Licenses

#### § 4144 ~~4147.~~ Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall ~~consider the disciplinary guidelines entitled~~ comply with the “Uniform Standards Related to Substance Abuse and Disciplinary Guidelines” [~~December 2003~~ July 2010 July 2011], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

#### ~~§ 4148. Required Actions Against Registered Sex Offenders:~~

~~(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:~~

~~(1) Deny an application by the individual for licensure;~~

~~(2) Revoke the license of the individual, and shall not stay the revocation nor place the license on probation;~~

~~(3) Not reinstate or reissue the individual's license;~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration;~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code;~~

~~(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation shall not be subject to the provisions of this section. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.~~

~~NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2965, and 2966, Business and Professions Code.~~

**DRAFT**

California Board of Occupational Therapy

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND  
DISCIPLINARY GUIDELINES**

**December 2003 ~~July 2010~~ July 2011**

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at [www.bot.ca.gov](http://www.bot.ca.gov).

California Board of Occupational Therapy

**UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE  
AND DISCIPLINARY GUIDELINES**

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California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND  
DISCIPLINARY GUIDELINES

Article 5.5 ~~Enforcement~~ Standards Related to Denial, Discipline, and Reinstatement of Licenses

**§ 4144 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.**

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [~~March 2010~~ July 2011] which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

## UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

### Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license which scope of practice authorizes him or her to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

### Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

## FACILITATED GROUP SUPPORT MEETINGS

If a board requires a licensee to participate in facilitated group support meetings, the following shall apply:

When determining the frequency of required facilitated group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and
- the nature, duration, and severity of substance abuse.

### Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.

2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.

3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

4. The facilitator shall report any unexcused absence within 24 hours.

## WORK SITE MONITOR REQUIREMENTS:

If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.



- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

~~If a licensee tests positive for a banned substance, the Board shall automatically suspend the licensee's license, immediately contact the licensee and inform him or her that his or her license has been suspended and he or she may not practice until the suspension is lifted. The Board shall also immediately notify the licensee's employer that the licensee's license has been automatically suspended, and that he or she may not practice until the suspension is lifted.~~

### Major and Minor Violations

If a licensee commits a major violation, the Board shall order the licensee immediately to cease any practice of occupational therapy, immediately contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice unless notified by the Board, and refer the matter for disciplinary action or other action as determined by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

~~If a licensee commits a major violation, the Board shall automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board.~~

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

~~If a licensee commits a minor violation, the Board shall determine what action is appropriate.~~

### DRUG TESTING STANDARDS

If a licensee tests positive for a banned substance, the Board shall order that the licensee immediately cease any practice of occupational therapy, and immediately contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also immediately notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact as directed to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

## **DISCIPLINARY GUIDELINES**

### ***I. INTRODUCTION***

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Board of Occupational Therapy (Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorney's administrative law judges, occupational therapists, occupational therapy assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

For purposes of this document, the term "license" includes the occupational therapy license and the occupational therapy assistant certificate. The terms and conditions of probation are divided into two general categories:

- (1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
- (2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

~~Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at [www.bot.ca.gov](http://www.bot.ca.gov).~~

### ***II. GENERAL CONSIDERATIONS***

The Board requests that Proposed Decisions following administrative hearings include the following:

- a. Specific code sections violated with their definitions.
- b. Clear description of the violation.
- c. Respondent's explanation of the violation if he/she is present at the hearing.
- d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.

e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered = In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

### **III. DEFINITION OF PENALTIES**

*Revocation:* Loss of a license as the result of any one (1) or more violations of the Occupational Therapy Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

*Suspension:* Invalidation of a license for a fixed period of time, not to exceed one (1) year.

*Stayed Revocation:* Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

*Stayed Suspension:* Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

*Probation:* A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his/her conduct or preventing the likelihood of a recurrence of the violation.

### **IV. DISCIPLINARY GUIDELINES**

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages ~~8-14~~ 17-26.

BUSINESS AND PROFESSIONS CODE SECTIONS -- Occupational Therapy Practice Act

**Section 2570.23: Violation of 2570.3 - Unlicensed Person Engaging in Practice - Sanctions**

Applicant Maximum: Denial of application for a license  
Applicant Minimum: Thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional conditions [#26 and #30]

**Section 2570.28(a)(1),(2),or(3): Unprofessional Conduct – Incompetence, Gross Negligence, Repeated Negligent Acts, Conviction of Practicing Medicine**

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional conditions [~~#22 and~~ #23, #25, #26, #28, #30]

**Section 2570.28(a)(4): Unprofessional Conduct – False Advertising**

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional conditions [#26, #30]

**Section 2570.28(a)(5): Unprofessional Conduct – Discipline by Other Government Agency**

Maximum: Revocation  
Minimum: Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]

**Section 2570.28(b): Procuring a License by Fraud, Misrepresentation, Mistake**

Maximum: Revocation  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional condition [~~#22-#23, #26, #28]~~

<b>Section 2570.28(c):</b>	<b>Violating Any Provision of the Occupational Therapy Practice Act or Regulations</b>
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
<b>Section 2570.28(d):</b>	<b>False Statement on Application for License or Renewal</b>
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#26 and #30]</u>
<b>Section 2570.28(e):</b>	<b>Conviction of Crime Substantially Related to License</b>
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#25, #26, #27, #28, #30]</u>
<b>Section 2570.28(f) or (g):</b>	<b>Impersonating an Applicant or Acting as Proxy for Another in an Examination for Licensure, Impersonating a Licensee or Allowing Another Person to Use License</b>
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#26 and #30]</u>
<b>Section 2570.28(h):</b>	<b>Committing Fraud, Dishonest or Corrupt Act</b>
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#26 and #30]</u>
<b>Section 2570.28(i):</b>	<b>Committing Any Act Punishable as Sexually Related Crime</b>
Maximum:	Revocation
Minimum:	Stayed revocation, ninety (90) days actual suspension and

five (5) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional Conditions [#15, #16, ~~#23~~ #24, #26, #30]

**Section 2570.28(j):**

**Using Excessive Force, Mistreating or Abusing Patient**

Maximum:  
Minimum:

Revocation  
Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional Conditions [#15, #16, ~~#23~~ #25, #26, 30]

**Section 2570.28(k):**

**Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record**

Maximum:  
Minimum:

Revocation  
Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]  
~~b. Optional Conditions [#14, #17 #19, #21]~~

**Section 2570.28(l):**

**Changing the Prescription of Physician or Falsifying Verbal or Written Orders**

Maximum:  
Minimum:

Revocation  
Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]

**Section 2570.28(m):**

**Failing to Maintain Patient Confidentiality**

Maximum:  
Minimum:

Revocation  
Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]

**Section 2570.28(n):**

**Delegating Services that Require License to Unlicensed Person**

Maximum:  
Minimum:

Revocation  
Stayed revocation and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13]

**Section 2570.28(o):**

**Committing Act that would be Grounds for Denial under Section 480**

Maximum:

Revocation

Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
<b>Section 2570.28(p):</b>	<b>Failing to Follow Infection Control Guidelines</b>
Maximum:	Revocation
Minimum:	Stayed revocation and one (1) year probation on the following conditions: a. Standard conditions [#1-#13]
<b>Section 2570.29(a):</b>	<b>Obtain, Possess, Administer to Self, Furnish or Administer to Others, Controlled Substance</b>
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]</u>
<b>Section 2570.29(b)(1)(2) or (3):</b>	<b>Use Controlled Substance, Dangerous Drug, Alcohol in Manner Dangerous, Injurious to Self or Others</b>
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]</u>
<b>Section 2570.29(c):</b>	<b>Conviction of Crime Involving Controlled Substance, Dangerous Drug, Alcohol or Falsifying a Record Involving Same</b>
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. <u>Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]</u>
<b>Section 2570.29(d):</b>	<b>Committed or Confined by Court for Intemperate Use of Controlled Substance, Dangerous Drug, Alcohol</b>
Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions:



- a. Standard conditions [#1-#13]
- b. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #28, #31]

**Section 2570.29(e):**

**Falsify, Make Grossly Incorrect, Inconsistent, or Unintelligible Entries in Hospital/Patient Record involving Controlled Substance or Dangerous Drug**

Maximum: Revocation  
 Minimum: Stayed revocation and three (3) years probation on the following conditions:  
 a. Standard conditions [#1-#13]  
 b. Optional conditions [#14, #17, #18-#19a and/or 19b or 19c, #20, #21, #22, #24, #31]

*GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE*

**Section 119:**

**Misdemeanor Pertaining to Use of a License**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
 a. Standard conditions [#1-#13]

**Section 125:**

**Misdemeanor Pertaining to Conspiring with Unlicensed Person for Use of a License**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
 a. Standard conditions [#1-#13]

**Section 125.6:**

**Discrimination by Licensee**

Maximum: Revocation  
 Minimum: Stayed revocation and one (1) year probation on the following conditions:  
 a. Standard conditions [#1-#13]

**Section 480 (a):**

**Denial of Licenses**

Maximum/Minimum: Denial of license

**Section 480(a)(c):**

**Denial of Licenses**

Maximum/Minimum: Denial of license

**Section 496: Subversion of Licensing Examinations or Administration of Examinations.**

Maximum: Denial or revocation of license  
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:  
a. Standard conditions [#1-#13}  
b. Optional condition [~~#22~~ #23, #26, #30]

**Section 726:** **Sexual Abuse, Misconduct, or Relations with a Patient or Client**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional conditions [#25, #26, #30]

**Section 730:** **Performing Medical Evaluation Without Certification**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1-#13]

**Section 810:** **Fraudulent Claims**

Maximum: Revocation  
Minimum: Stayed revocation and one (1) year probation on the following conditions:  
a. Standard conditions [#1-#13]  
b. Optional conditions [#26, 27, #30]

**V. STANDARD CONDITIONS OF PROBATION**  
**(to be included in all cases of probation)**

**1. Obey All Laws**

Respondent shall obey all federal, state and local laws and regulations governing the practice of occupational therapy in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Board within five (5) days of occurrence.

**2. Compliance with Probation and Quarterly Reporting**

Respondent shall fully comply with the terms and conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board (~~Attachment A~~) (Quarterly Written Report, rev. 12/2009).

**3. Personal Appearances**

Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.

**4. Notification of Address and Telephone Number Change(s)**

Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of his/her new address and any change in work and/or home telephone numbers.

**5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice**

In the event respondent should leave California to reside or to practice outside the State for more than thirty (30) days, respondent shall notify the Board or its designee in writing within ~~ten (10)~~ five (5) days of the dates of departure and return. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the period of probation shall be extended for the period of time respondent was out of state.

Unless by Board order, in the event respondent is not engaging in the practice of occupational therapy while residing in California, respondent shall notify the Board or its designee in writing within five (5) days of the dates of cessation of practice and expected return to practice. All provisions of probation shall remain in effect, and the period of probation shall be extended for the period of time respondent was not engaged in the practice of occupational therapy as required by other employment requirement of this order.

**6. Notification to Employer(s)**

When currently employed, ~~or~~ applying for employment in any capacity, ~~or contracted to provide occupational therapy services, in any health care profession~~ Respondent shall ~~notify his/her~~ provide a copy of the Board's Decision to each employer, supervisor, or contractor of the probationary status of respondent's license. This notification to the current employer shall occur no later than the effective date of the Decision. Respondent shall notify any prospective ~~health care~~ employer, supervisor, or contractor of his/her probationary status with the Board prior to accepting such employment. This notification shall ~~be made by providing the employer or prospective employer with~~ include a copy of the

Board's Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

The respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers, supervisors and contractors, and shall inform the Board in writing of the facility or facilities at which the person is providing occupational therapy services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board, to allow the Board to communicate with the employer and supervisor or contractor regarding issues including but not limited to the licensee's work status, attendance, performance, and on-going monitoring.

Respondent shall cause each ~~health care~~ employer and supervisor or contractor to submit quarterly reports to the Board. The report shall be on a form provided by the Board, and shall include a performance evaluation and such other information as may be required by the Board (~~Attachment B~~)(Work Performance Evaluation Form. rev. 12/2010).

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, within five (5) days if he/she is terminated from any occupational therapy or health care related employment with a full explanation of the circumstances surrounding the termination.

#### **7. Employment Requirements and Limitations**

During probation, respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a registry or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, or his or her license is temporarily suspended, the period of probation shall be ~~told during that time~~ extended for that period of time.

#### **8. Supervision Requirements**

Respondent shall obtain ~~prior~~ approval from the Board, when continuing or before commencing any employment, regarding the level of supervision provided to the respondent while employed as an occupational therapist or occupational therapy assistant.

Respondent shall not function as a supervisor during the period of probation except as approved, in writing, by the Board.

#### **9. Continuing Education Requirements**

Respondent shall complete continuing education directly relevant to the violation as specified by the

Board. Continuing education shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Continuing education shall be in addition to the professional development activities required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of the assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Failure to satisfactorily complete the required continuing education as ~~scheduled~~ designated or failure to complete same no later than ~~100 days prior to the termination of probation~~ one year from the date of the Board's written notification shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion of the course(s), respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

#### **10. Maintenance of Valid License**

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

#### **11. Cost Recovery Requirements**

Where an order for recovery of costs is made, respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one (1) year, the license of any respondent who demonstrates financial hardship. Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one (1) year period.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

#### **12. Violation of Probation**

If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

#### **13. Completion of Probation**

Upon successful completion of probation, respondent's license will be fully restored.

### ***VI. OPTIONAL CONDITIONS OF PROBATION***

#### **14. Examination by a Physician**

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician and surgeon of his/her choice who meets minimum criteria established by the Board. The physician and surgeon must shall be licensed in California and Medical Board Certified in Family Practice, Internal Medicine or a related specialty. The purpose of the examination shall be to determine respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Disciplinary Order prior to the examination. Cost of such examination shall be paid by respondent.

Respondent shall cause the physician and surgeon to complete a written medical report to be submitted directly to the Board within ninety (90) days of the effective date of the Decision. If the examining physician and surgeon finds that respondent is not physically fit to practice or can only practice with restrictions the ~~examining~~ physician shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the ~~examining~~ physician's and surgeon's determination of unfitness to practice and shall order the respondent to cease practice or place restrictions on respondent's practice. ~~licensed activities as a condition of probation.~~ Respondent shall comply with ~~this condition~~ any order to cease practice or restriction of his or her practice until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. ~~Respondent shall document compliance in the manner required by the Board.~~

#### **15. Psychological Evaluation**

Within sixty (60) days of the effective date of the Decision, respondent shall submit to a psychiatric/ or psychological evaluation. Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed evaluators for prior approval by the Board to conduct a psychiatric or psychological evaluation. The evaluation shall be performed by a ~~psychiatrist~~ physician and surgeon licensed in California and ~~Medical~~ Board Certified in Psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to safely perform all professional duties with safety to self and the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely or can only practice safely with restrictions, the evaluator shall orally notify the Board within one (1) working day, and then notify the Board, in writing, within five (5) working days. The Board shall notify the respondent in writing of the evaluator's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

#### **16. Psychotherapy**

Within sixty (60) days of the effective date of the Decision, respondent shall submit to the Board the name of one (1) or more proposed therapists for prior approval. Respondent shall participate in ongoing

psychotherapy with a California licensed or legally registered mental health professional approved by the Board. ~~Upon~~ Within ten (10) days of receiving notification of approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that respondent is not fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the therapist's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance with this condition in the manner required by the Board.

#### **17. Clinical Diagnostic Evaluation**

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

~~Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license shall be automatically suspended for minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.~~

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of occupational therapy, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of occupational therapy for minimum of one month pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent's license shall remain suspended not practice occupational therapy until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any ~~restrictions or recommendations~~ terms or conditions made by the Board as a result of the clinical

diagnostic evaluation.

### **18. Rehabilitation Program**

Within thirty (30) days of the effective date of the Decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work settings, random bodily fluid or other matter testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. Cost for participation in this program shall be paid by respondent.

### **19. Support Groups**

#### **18. 19a Chemical Dependency Support/Recovery Groups**

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous), and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

#### **19b. Facilitated Support Group Meetings**

Within thirty (30) days of the effective date of the Decision, respondent shall begin attendance at a facilitated support group, and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;



- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**19c. Group Support/Recovery Meetings**

Respondent shall begin and continue attendance at a support/recovery group (e.g., Alcoholics Anonymous, Narcotics Anonymous, or a facilitated group) as ordered by the Board or its designee. When determining the type and frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

- a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
- b. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
- c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
- d. The facilitator shall report any unexcused absence within 24 hours.

*NOTE TO ALL: Condition 19c is not necessary if 19a or 19b is ordered.*

**19. 20. Abstain from Controlled Substances**

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in

sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness or condition. If under such prescription, Respondent shall cause to have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

**20, 21. Abstain from use of Alcohol**

Respondent shall completely abstain from the use intake of alcoholic beverages during the period of probation.

**21, 22. Submit Biological Fluid or Specimen Samples**

Respondent shall immediately submit to random and directed biological fluid alcohol and/or drug testing at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and a minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. There will be no confidentiality in the test results; positive test results will be immediately reported to the Board and the respondent's current employer. If Respondent tests positive for a banned substance, Respondent's license shall be automatically suspended ordered by the Board to immediately cease any practice of occupational therapy, and may not practice unless and until notified by the Board. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit to his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

**22, 23. Take and Pass the Licensure Examination**

Respondent shall take and pass the licensure examination currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

As a condition precedent to reinstatement of a license, respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or other terms of probation shall be tolled until the respondent has successfully passed the licensure examination and notice of licensure has been mailed to respondent by the Board.

**23, 24. Worksite Monitor**

Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

Reporting by the worksite monitor to the board shall be as follows:  
Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the

oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

### **23.24. 25. Restriction on Licensed Practice**

Respondent shall practice only with a specified client population, in a specified practice setting, or engage in limited occupational therapy services. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in a manner required by the Board.

### **24.25. 26. Suspension**

Respondent is suspended from the practice of occupational therapy for \_\_\_\_\_ days beginning on the effective date of the Decision. Respondent shall be responsible for informing his or her employer of the Board's decision, the reasons for the length of suspension. ~~Prior to the lifting of the actual suspension of license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.~~

### **25.26. 27. Restitution**

Within \_\_\_\_\_ days of the effective date of this Decision, respondent shall make restitution to \_\_\_\_\_ in the amount of \$\_\_\_\_\_ and shall provide the Board with proof from \_\_\_\_\_ attesting that the full restitution has been paid. In all cases, restitution shall be made before the termination of probation.

### **26.27. 28. Criminal Probation Reports**

Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

### **27.28. 29. Relinquish License and Wall Certificate**

Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within ten (10) days of the effective date of the Decision and order.

### **28.29. 30. Notification to Clients/Cessation of Practice**

In orders that provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

### **31. Request for Modification**

"Request" as used in this standard is a request made to the Board's designee, and is not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board:

a. Demonstrated sustained compliance with current recovery program.

b. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.

c. Negative alcohol and drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

## ***VII. REHABILITATION CRITERIA***

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
- (6) Evidence, if any, of rehabilitation submitted by the licensee.

## ***VIII. PETITION FOR REINSTATEMENT/REDUCTION IN PENALTY***

When considering a petition for reinstatement of the license or a petition for reduction in penalty, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in section VII. above.

# **Uniform Standards Regarding Substance-Abusing Healing Arts Licensees**

Senate Bill 1441 (Ridley-Thomas)

Implementation by  
Department of Consumer Affairs,  
Substance Abuse Coordination Committee



Brian J. Stiger, Director  
April 2010

STATE OF CALIFORNIA  
**dca**  
DEPARTMENT OF CONSUMER AFFAIRS

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**#1 SENATE BILL 1441 REQUIREMENT**

Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

**#1 Uniform Standard**

If a healing arts board orders a licensee who is either in a diversion program or whose license is on probation due to a substance abuse problem to undergo a clinical diagnosis evaluation, the following applies:

1. The clinical diagnostic evaluation shall be conducted by a licensed practitioner who:
  - holds a valid, unrestricted license, which includes scope of practice to conduct a clinical diagnostic evaluation;
  - has three (3) years experience in providing evaluations of health professionals with substance abuse disorders; and,
  - is approved by the board.
2. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.
3. The clinical diagnostic evaluation report shall:
  - set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem;
  - set forth, in the evaluator's opinion, whether the licensee is a threat to himself/herself or others; and,
  - set forth, in the evaluator's opinion, recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial relationship, personal relationship, or business relationship with the licensee within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself/herself or others, the evaluator shall notify the board within 24 hours of such a determination.

**Uniform Standards**

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For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

**#2 SENATE BILL 1441 REQUIREMENT**

Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in subdivision (a) and any treatment recommended by the evaluator described in subdivision (a) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

**#2 Uniform Standard**

The following practice restrictions apply to each licensee who undergoes a clinical diagnostic evaluation:

1. The Board shall order the licensee to cease practice during the clinical diagnostic evaluation pending the results of the clinical diagnostic evaluation and review by the diversion program/board staff.
2. While awaiting the results of the clinical diagnostic evaluation required in Uniform Standard #1, the licensee shall be randomly drug tested at least two (2) times per week.

After reviewing the results of the clinical diagnostic evaluation, and the criteria below, a diversion or probation manager shall determine, whether or not the licensee is safe to return to either part-time or fulltime practice. However, no licensee shall be returned to practice until he or she has at least 30 days of negative drug tests.

- the license type;
- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the scope and pattern of use;
- the treatment history;
- the licensee's medical history and current medical condition;
- the nature, duration and severity of substance abuse, and
- whether the licensee is a threat to himself/herself or the public.

**#3 SENATE BILL 1441 REQUIREMENT**

Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status or condition.

**#3 Uniform Standard**

If the licensee who is either in a board diversion program or whose license is on probation has an employer, the licensee shall provide to the board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors and shall give specific, written consent that the licensee authorizes the board and the employers and supervisors to communicate regarding the licensee's work status, performance, and monitoring.

**#4 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test, standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

**#4 Uniform Standard**

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year and at any time as directed by the board. After the first year, licensees, who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.
2. Drug testing may be required on any day, including weekends and holidays.
3. The scheduling of drug tests shall be done on a random basis, preferably by a computer program.
4. Licensees shall be required to make daily contact to determine if drug testing is required.
5. Licensees shall be drug tested on the date of notification as directed by the board.
6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.
9. Collection of specimens shall be observed.
10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.
11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The appropriate board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

**#5 SENATE BILL 1441 REQUIREMENT**

Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

**#5 Uniform Standard**

If a board requires a licensee to participate in group support meetings, the following shall apply:

When determining the frequency of required group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

**Group Meeting Facilitator Qualifications and Requirements:**

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

**#6 SENATE BILL 1441 REQUIREMENT**

Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

**#6 Uniform Standard**

In determining whether inpatient, outpatient, or other type of treatment is necessary, the board shall consider the following criteria:

- recommendation of the clinical diagnostic evaluation pursuant to Uniform Standard #1;
- license type;
- licensee's history;
- documented length of sobriety/time that has elapsed since substance abuse;
- scope and pattern of substance use;
- licensee's treatment history;
- licensee's medical history and current medical condition;
- nature, duration, and severity of substance abuse, and
- threat to himself/herself or the public.

**#7 SENATE BILL 1441 REQUIREMENT**

Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

**#7 Uniform Standard**

A board may require the use of worksite monitors. If a board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor shall meet the following requirements to be considered for approval by the board.

1. The worksite monitor shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
2. The worksite monitor's license scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional if no monitor with like practice is available.
3. The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.
4. The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
5. The worksite monitor must adhere to the following required methods of monitoring the licensee:
  - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
  - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
  - c) Review the licensee's work attendance.



Reporting by the worksite monitor to the board shall be as follows:

1. Any suspected substance abuse must be verbally reported to the board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
2. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
  - the licensee's name;
  - license number;
  - worksite monitor's name and signature;
  - worksite monitor's license number;
  - worksite location(s);
  - dates licensee had face-to-face contact with monitor;
  - staff interviewed, if applicable;
  - attendance report;
  - any change in behavior and/or personal habits;
  - any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the board to allow the board to communicate with the worksite monitor.

**#8 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee tests positive for a banned substance.

**#8 Uniform Standard**

When a licensee tests positive for a banned substance:

1. The board shall order the licensee to cease practice;
2. The board shall contact the licensee and instruct the licensee to leave work; and
3. The board shall notify the licensee's employer, if any, and worksite monitor, if any, that the licensee may not work.

Thereafter, the board should determine whether the positive drug test is in fact evidence of prohibited use. If so, proceed to Standard #9. If not, the board shall immediately lift the cease practice order.

In determining whether the positive test is evidence of prohibited use, the board should, as applicable:

1. Consult the specimen collector and the laboratory;
2. Communicate with the licensee and/or any physician who is treating the licensee; and
3. Communicate with any treatment provider, including group facilitator/s.

**#9 SENATE BILL 1441 REQUIREMENT**

Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

**#9 Uniform Standard**

When a board confirms that a positive drug test is evidence of use of a prohibited substance, the licensee has committed a major violation, as defined in Uniform Standard #10 and the board shall impose the consequences set forth in Uniform Standard #10.

**#10 SENATE BILL 1441 REQUIREMENT**

Specific consequences for major and minor violations. In particular, the committee shall consider the use of a "deferred prosecution" stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency until or unless licensee commits a major violation, in which case it is revived and license is surrendered.

**#10 Uniform Standard**

**Major Violations** include, but are not limited to:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Multiple minor violations;
4. Treating patients while under the influence of drugs/alcohol;
5. Any drug/alcohol related act which would constitute a violation of the practice act or state/federal laws;
6. Failure to obtain biological testing for substance abuse;
7. Testing positive and confirmation for substance abuse pursuant to Uniform Standard #9;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

**Consequences** for a major violation include, but are not limited to:

1. Licensee will be ordered to cease practice.
  - a) the licensee must undergo a new clinical diagnostic evaluation, and
  - b) the licensee must test negative for at least a month of continuous drug testing before being allowed to go back to work.
2. Termination of a contract/agreement.
3. Referral for disciplinary action, such as suspension, revocation, or other action as determined by the board.

**Minor Violations** include, but are not limited to:

1. Untimely receipt of required documentation;
2. Unexcused non-attendance at group meetings;
3. Failure to contact a monitor when required;
4. Any other violations that do not present an immediate threat to the violator or to the public.

**Consequences** for minor violations include, but are not limited to:

1. Removal from practice;
2. Practice limitations;
3. Required supervision;
4. Increased documentation;
5. Issuance of citation and fine or a warning notice;
6. Required re-evaluation/testing;
7. Other action as determined by the board.

**#11 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for return to practice on a full time basis.

**#11 Uniform Standard**

**“Petition” as used in this standard is an informal request as opposed to a “Petition for Modification” under the Administrative Procedure Act.**

The licensee shall meet the following criteria before submitting a request (petition) to return to full time practice:

1. Demonstrated sustained compliance with current recovery program.
2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
3. Negative drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

**#12 SENATE BILL 1441 REQUIREMENT**

Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

**#12 Uniform Standard**

**“Petition for Reinstatement” as used in this standard is an informal request (petition) as opposed to a “Petition for Reinstatement” under the Administrative Procedure Act.**

The licensee must meet the following criteria to request (petition) for a full and unrestricted license.

1. Demonstrated sustained compliance with the terms of the disciplinary order, if applicable.
2. Demonstrated successful completion of recovery program, if required.
3. Demonstrated a consistent and sustained participation in activities that promote and support their recovery including, but not limited to, ongoing support meetings, therapy, counseling, relapse prevention plan, and community activities.
4. Demonstrated that he or she is able to practice safely.
5. Continuous sobriety for three (3) to five (5) year.

**#13 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, (1) standards for immediate reporting by the vendor to the board of any and all noncompliance with process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; (3) standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and (4) standards for a licensee's termination from the program and referral to enforcement.

**#13 Uniform Standard**

1. A vendor must report to the board any major violation, as defined in Uniform Standard #10, within one (1) business day. A vendor must report to the board any minor violation, as defined in Uniform Standard #10, within five (5) business days.
2. A vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors is as follows:

**Specimen Collectors:**

- a) The provider or subcontractor shall possess all the materials, equipment, and technical expertise necessary in order to test every licensee for which he or she is responsible on any day of the week.
- b) The provider or subcontractor shall be able to scientifically test for urine, blood, and hair specimens for the detection of alcohol, illegal, and controlled substances.
- c) The provider or subcontractor must provide collection sites that are located in areas throughout California.
- d) The provider or subcontractor must have an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the participant to check in daily for drug testing.
- e) The provider or subcontractor must have or be subcontracted with operating collection sites that are engaged in the business of collecting urine, blood, and hair follicle specimens for the testing of drugs and alcohol within the State of California.
- f) The provider or subcontractor must have a secure, HIPAA compliant, website or computer system to allow staff access to drug test results and compliance reporting information that is available 24 hours a day.



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- g) The provider or subcontractor shall employ or contract with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory drug test results, medical histories, and any other information relevant to biomedical information.
- h) A toxicology screen will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance.
- i) Must undergo training as specified in Uniform Standard #4 (6).

### Group Meeting Facilitators:

A group meeting facilitator for any support group meeting:

- a) must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse;
- b) must be licensed or certified by the state or other nationally certified organization;
- c) must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years;
- d) shall report any unexcused absence within 24 hours to the board, and,
- e) shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.

### Work Site Monitors:

1. The worksite monitor must meet the following qualifications:
  - a) Shall not have financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the board; however, under no circumstances shall a licensee's worksite monitor be an employee of the licensee.
  - b) The monitor's licensure scope of practice shall include the scope of practice of the licensee that is being monitored or be another health care professional, if no monitor with like practice is available.
  - c) Shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

## Uniform Standards

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- d) Shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and/or contract and agrees to monitor the licensee as set forth by the board.
2. The worksite monitor must adhere to the following required methods of monitoring the licensee:
    - a) Have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the board, at least once per week.
    - b) Interview other staff in the office regarding the licensee's behavior, if applicable.
    - c) Review the licensee's work attendance.
  3. Any suspected substance abuse must be verbally reported to the contractor, the board, and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the board's normal business hours the verbal report must be within one (1) hour of the next business day. A written report shall be submitted to the board within 48 hours of occurrence.
  4. The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include:
    - the licensee's name;
    - license number;
    - worksite monitor's name and signature;
    - worksite monitor's license number;
    - worksite location(s);
    - dates licensee had face-to-face contact with monitor;
    - staff interviewed, if applicable;
    - attendance report;
    - any change in behavior and/or personal habits;
    - any indicators that can lead to suspected substance abuse.

## Treatment Providers

1. Treatment facility staff and services must have:
  - a) Licensure and/or accreditation by appropriate regulatory agencies;
  - b) Sufficient resources available to adequately evaluate the physical and mental needs of the client, provide for safe detoxification, and manage any medical emergency;
  - c) Professional staff who are competent and experienced members of the clinical staff;

- d) Treatment planning involving a multidisciplinary approach and specific aftercare plans;
  - e) Means to provide treatment/progress documentation to the provider.
2. The vendor shall disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services as follows:
- a) The vendor is fully responsible for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by any of them. No subcontract shall relieve the vendor of its responsibilities and obligations. All state policies, guidelines, and requirements apply to all subcontractors.
  - b) If a subcontractor fails to provide effective or timely services as listed above, but not limited to any other subcontracted services, the vendor will terminate services of said contractor within 30 business days of notification of failure to provide adequate services.
  - c) The vendor shall notify the appropriate board within five (5) business days of termination of said subcontractor.

**#14 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

**#14 Uniform Standard**

The board shall disclose the following information to the public for licensees who are participating in a board monitoring/diversion program regardless of whether the licensee is a self-referral or a board referral. However, the disclosure shall not contain information that the restrictions are a result of the licensee's participation in a diversion program.

- Licensee's name;
- Whether the licensee's practice is restricted, or the license is on inactive status;
- A detailed description of any restriction imposed.

**#15 SENATE BILL 1441 REQUIREMENT**

If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor's performance in adhering to the standards adopted by the committee.

**#15 Uniform Standard**

1. If a board uses a private-sector vendor to provide monitoring services for its licensees, an external independent audit must be conducted at least once every three (3) years by a qualified, independent reviewer or review team from outside the department with no real or apparent conflict of interest with the vendor providing the monitoring services. In addition, the reviewer shall not be a part of or under the control of the board. The independent reviewer or review team must consist of individuals who are competent in the professional practice of internal auditing and assessment processes and qualified to perform audits of monitoring programs.
2. The audit must assess the vendor's performance in adhering to the uniform standards established by the board. The reviewer must provide a report of their findings to the board by June 30 of each three (3) year cycle. The report shall identify any material inadequacies, deficiencies, irregularities, or other non-compliance with the terms of the vendor's monitoring services that would interfere with the board's mandate of public protection.
3. The board and the department shall respond to the findings in the audit report.

**#16 SENATE BILL 1441 Requirement**

Measurable criteria and standards to determine whether each board's method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

**#16 Uniform Standard**

Each board shall report the following information on a yearly basis to the Department of Consumer Affairs and the Legislature as it relates to licensees with substance abuse problems who are either in a board probation and/or diversion program.

- Number of intakes into a diversion program
- Number of probationers whose conduct was related to a substance abuse problem
- Number of referrals for treatment programs
- Number of relapses (break in sobriety)
- Number of cease practice orders/license in-activations
- Number of suspensions
- Number terminated from program for noncompliance
- Number of successful completions based on uniform standards
- Number of major violations; nature of violation and action taken
- Number of licensees who successfully returned to practice
- Number of patients harmed while in diversion

The above information shall be further broken down for each licensing category, specific substance abuse problem (i.e. cocaine, alcohol, Demerol etc.), whether the licensee is in a diversion program and/or probation program.

If the data indicates that licensees in specific licensing categories or with specific substance abuse problems have either a higher or lower probability of success, that information shall be taken into account when determining the success of a program. It may also be used to determine the risk factor when a board is determining whether a license should be revoked or placed on probation.

The board shall use the following criteria to determine if its program protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term.

- At least 100 percent of licensees who either entered a diversion program or whose license was placed on probation as a result of a substance abuse problem successfully completed either the program or the probation, or had their license to practice revoked or surrendered on a timely basis based on noncompliance of those programs.

- At least 75 percent of licensees who successfully completed a diversion program or probation did not have any substantiated complaints related to substance abuse for at least five (5) years after completion.

## **AGENDA ITEM 9**

### **EDUCATION/OUTREACH COMMITTEE REPORT.**

The following items were reviewed by the Committee:

- Roles and Responsibilities
- Expert Witness and Expert Reviewer information
- Various pamphlets and brochures from other OT Boards and other California health care boards



California Board of Occupational Therapy

**EDUCATION / OUTREACH  
COMMITTEE**

**Roles & Responsibilities**

1. Develop consumer brochures for use by the Board and Board staff;
2. Develop website content to educate consumers about occupational therapy;
3. Develop website content to educate licensees about the regulation of occupational therapy;
4. Prepare articles for newsletter to educate or provide updated information to licensees;
5. Review and provide recommendations to Board staff on revisions to various applications and forms used by the Board.

Extract from Board ADMINISTRATIVE MANUAL

The purpose of the Education and Outreach Committee is to develop consumer and licensee outreach projects, including the Board's newsletter, website, e-government initiatives and outside organization presentations.

DEPARTMENT OF CONSUMER AFFAIRS  
**BOARD OF OCCUPATIONAL THERAPY**

## Licensees

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### IMPORTANT LINKS

[Disciplinary Action](#)

[Advanced Practice](#)

[Continuing Competency](#)

[Related Links](#)

[Renewal Information](#)

[Inactive Status](#)

[Outreach/Events](#)

[Become an Expert Witness / Expert Reviewer for CBOT](#)

[Written Verification of Your License for Another State or Organization](#)

### ADDITIONAL INFORMATION

Do you want to know what the Board is discussing at its meetings?  
Do you want to know when the Board is considering amendments to the regulations?

*If you want to receive important, timely, and relevant information to you - please consider subscribing to our [Interested Parties list](#). We won't bog down your in-box! You'll receive about 8-12 emails per year with information regarding upcoming Board meetings, upcoming legislative and regulatory changes, Newsletters, new Board policies and other important information.*

The Board is looking for practitioners to serve on several committees. *Find out how you can [help](#).*

If you are an OT or OTA, **YOU** are a mandatory reporter. *Learn more about the [Mandatory Reporting Requirements](#).*

Would you recognize the [signs and symptoms](#) of someone who is using drugs or alcohol in the workplace? On-the-job impairment affects Everyone. *Find out more information regarding [treatment](#).*

PROBATIONERS subject to biological fluid testing should avoid exposure to alcohol; [click here](#) for a comprehensive list of alcohol-free products and alcohol-based products to avoid.

What happens when the Board receives a COMPLAINT? *Review a flow chart demonstrating the Board's [complaint process](#).*

If you have additional questions, please email the Board at: [cbot@dca.ca.gov](mailto:cbot@dca.ca.gov).

**DEPARTMENT OF CONSUMER AFFAIRS  
BOARD OF OCCUPATIONAL THERAPY****Recruiting Expert Witnesses & Expert Reviewers**

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**Expert Witnesses**

The CBOT Enforcement Program is currently recruiting qualified occupational therapists to review case materials, prepare written opinions, and possibly testify at administrative hearings as an Expert Witness. Expert Witnesses are paid \$75 per hour for case review and preparation of the expert opinion report and \$120 per hour plus expenses if called to testify at an administrative hearing. If you wish to provide this service to your community, please verify that you have:

Fifteen or more years of experience with seven years of recent experience in the area of expertise for which they are reviewing cases or rendering a professional opinion.

**Expert Reviewers**

The CBOT Licensing Program is currently recruiting qualified occupational therapists review applicants for advanced practice approval and applications for advanced practice post-professional education. Expert Reviewers are paid \$40 per hour for their services. If you wish to provide this service to your community, please verify that you have:

At least five, of the past seven years, practicing in an advanced practice area.

**Both Expert Witnesses and Expert Reviewers must have:**

A current and active California OT license without restrictions.

No prior or current charges or discipline against any health care related license in California or in any other place of licensure.

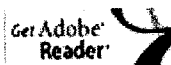
No criminal convictions, including any that were expunged or dismissed.

If you meet the requirements and are interested in providing this service to your community, complete the [Expert Witness application](#) or [Expert Reviewer application](#) and follow the instructions carefully. Once completed, send the application and your Curriculum Vitae (resume) to:

**California Board of Occupational Therapy  
2005 Evergreen Street; Suite 2050  
Sacramento, CA 95815**

If you have additional questions, please email the Board at: [cbot@dca.ca.gov](mailto:cbot@dca.ca.gov).

This web site contains PDF documents that require the most current version of Adobe Reader to view. To download click on the icon below.





**BOARD OF OCCUPATIONAL THERAPY**  
 2005 Evergreen Street, Suite 2050, Sacramento, CA 95815-3831  
 T: (916) 263-2294 F: (916) 263-2701  
 E-mail: [cbot@dca.ca.gov](mailto:cbot@dca.ca.gov) Web: [www.bot.ca.gov](http://www.bot.ca.gov)



## APPLICATION FOR EXPERT WITNESS PROGRAM

Thank you for your interest in serving the Board of Occupational Therapy as an expert witness. Expert witnesses are licensed occupational therapists and occupational therapy assistants with the professional and educational background to review complaints, develop opinions, prepare written reports and/or testify at administrative hearings. Expert witnesses are an important part of the Board's Enforcement Program and their effectiveness is vital for fulfilling our legislative mandate to protect California consumers of occupational therapy services from unprofessional, incompetent and otherwise dangerous practitioners.

If you wish to provide this service to your community and be considered by the Board as an expert witness, please complete all sections of the application and submit to the above address. Please attach your resume or Curriculum Vitae.

**An expert witness must hold a current and active license without restrictions.**

It is imperative that expert witnesses have at least fifteen (15) years experience with seven (7) years of recent experience in the area of expertise for which they will be reviewing cases and rendering a professional opinion. Please select (✓) the applicable area(s) for which you are most knowledgeable, keeping in mind that you will need to defend your position in court should you be called to testify. **California Civil Code Section 43.8 provides immunity for those practitioners who render an opinion against an occupational therapist or an occupational therapy assistant for the Board.**

- |  |  |                                      |
|--|--|--------------------------------------|
| <input type="checkbox"/> Private Practice          | <input type="checkbox"/> Physical Disabilities | <input type="checkbox"/> Technology  |
| <input type="checkbox"/> School-Based Practice     | <input type="checkbox"/> Behavioral Health     | <input type="checkbox"/> Education   |
| <input type="checkbox"/> Pediatrics                | <input type="checkbox"/> Gerontology           | <input type="checkbox"/> Research    |
| <input type="checkbox"/> Work Program              | <input type="checkbox"/> Home Health           | <input type="checkbox"/> Wellness    |
| <input type="checkbox"/> Administrative Management | <input type="checkbox"/> Hand Therapy          | <input type="checkbox"/> Other _____ |

Indicate all advanced practice area(s) which you have been approved by the Board and the date of approval:

- Hand Therapy - Date of Approval:
- Physical Agent Modalities - Date of Approval:
- Swallowing Assessment, Evaluation and Intervention - Date of Approval:

**Section I: Personal Data (Please Complete All Boxes)**

Last Name		First Name		Middle Name	
Residence Address (Street No., Apt No.)		City	State	Zip Code	
Home Telephone No. ( )	Business Telephone No. ( )	FAX No. ( )		E-Mail Address	

**Section II: Professional Data (Please Complete All Boxes. Attach additional pages if necessary.)**

License No.	Original Issue Date	Expiration Date	Type <input type="checkbox"/> OT <input type="checkbox"/> OTA
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1. Do you possess a *current* certification from the National Board for Certification in Occupational Therapy, Inc. (NBCOT), or membership with the American Occupational Therapy Association (AOTA), Occupational Therapy Association of California (OTAC), or other state association?

- Yes NBCOT: Certification No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 AOTA: Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 OTAC: Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 Other: \_\_\_\_\_ Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 Other: \_\_\_\_\_ Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).
- No

2. Do you currently hold any other licenses or specialty certifications, including occupational therapy or any other health related field, in California or in any other state?

- Yes If yes, please provide a list and details below.  No

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3. Has any health related professional licensing or disciplinary body in any state, territory or foreign jurisdiction, or any branch of the military, denied, limited, placed on probation, restricted, suspended, cancelled or revoked any professional license, certificate, or registration granted to you, or imposed a fine, reprimand, or taken any other action against you?

- Yes If yes, please provide details below.  No

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4. Have you ever been convicted of a crime?

- Yes If yes, please provide details below.  No

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5. Have you been actively engaged in the practice of occupational therapy (defined as at least 80 hours a month in occupational therapy, including direct client care, clinical activity, supervision, administration or teaching) in the past five years?

- Yes  No

*Please attach a copy of your resume or Curriculum Vitae to this application.*

6. Please describe your related practice activities within the past five years.

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7. Have you ever ceased practice for one year or more?

Yes If yes, please provide details below.  No

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8. Please describe any mentoring or supervisory positions you have been involved with in the past five years.

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9. Have you ever been an expert witness?

Yes If yes, please state when and in what capacity, and describe your service as a witness.  
 No

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10. Please describe any teaching or public speaking experience within the last five years. Please relate this experience to the specific area of expertise.

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11. Have you ever been involved in an accreditation process?

Yes If yes, please provide details below.  No

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12. Why do you feel you are qualified to be an expert witness?

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**Section III: Affidavit**

**I declare, under penalty of perjury of the laws of the State of California, that all of the information contained herein and evidence or other credentials submitted herewith are true and correct.**

**Further, I certify that I have read and understand the disclaimer listed below.**

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

Disclaimer: Licensees are prohibited from making any claim or any advertisement in which they represent themselves as being affiliated in any way with the California Board of Occupational Therapy. Licensees shall not represent themselves as being an expert, a Board "expert," hold themselves out as holding any credential, or use any designation based on their participation in the Expert Witness Program. By signing the affidavit in Section III, you indicate that you understand the prohibitions concerning Board affiliation and advertising. Failure to comply may result in disciplinary action.

Information Collection and Access: The Board's Executive Officer is the person responsible for information maintenance. Business and Professions Code section 2570.18 gives the Board authority to maintain information. All information is mandatory. Failure to provide any mandatory information will result in the application being rejected as incomplete. Authorized personnel will use the information provided to determine your eligibility for participation in the Expert Witness Program. Each individual has the right to review his or her file maintained by the agency subject to the provisions of the California Public Records Act.

Rev (1/11)



STATE AND FEDERAL PROFESSIONAL AGENCIES • GOVERNMENT REGULATION • ENFORCEMENT

**BOARD OF OCCUPATIONAL THERAPY**  
 2005 Evergreen Street, Suite 2050, Sacramento, CA 95815-3831  
 T: (916) 263-2204 F: (916) 263-2701  
 E-mail: [cbot@dca.ca.gov](mailto:cbot@dca.ca.gov) Web: [www.bot.ca.gov](http://www.bot.ca.gov)



## APPLICATION FOR EXPERT REVIEWER PROGRAM

Thank you for your interest in serving the Board of Occupational Therapy as an expert reviewer. Expert reviewers are licensed occupational therapists with the professional and educational background to review applicants for advanced practice approval and applications for advanced practice post-professional education. Expert reviewers are an important part of the Board's Licensing Program and their effectiveness is vital for fulfilling our legislative mandate to protect California consumers of occupational therapy services from unprofessional, incompetent and otherwise dangerous practitioners.

If you wish to provide this service to your community and be considered by the Board as an expert reviewer, please complete all sections of the application and submit to the above address. Please attach your resume or Curriculum Vitae.

**An expert reviewer must hold a current and active license without restrictions.**

It is imperative that expert reviewers have been practicing in an advanced practice area for at least five (5) of the past seven (7) years.

Indicate all advanced practice area(s) which you have been approved by the Board and the date of approval:

- Hand Therapy - Date of Approval:
- Physical Agent Modalities - Date of Approval:
- Swallowing Assessment, Evaluation and Intervention - Date of Approval:

### Section I: Personal Data (Please Complete All Boxes)

Last Name		First Name		Middle Name
Residence Address (Street No., Apt No.)		City	State	Zip Code
Home Telephone No. ( )	Business Telephone No. ( )	FAX No. ( )	E-Mail Address	

### Section II: Professional Data (Please Complete All Boxes. Attach additional pages if necessary.)

License No.	Original Issue Date	Expiration Date	
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1. Do you possess a *current* certification from the National Board for Certification in Occupational Therapy, Inc. (NBCOT), or membership with the American Occupational Therapy Association (AOTA), Occupational Therapy Association of California (OTAC), or other state association?

Yes NBCOT: Certification No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
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 OTAC: Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 Other: \_\_\_\_\_ Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 Other: \_\_\_\_\_ Membership No. \_\_\_\_\_ as of \_\_\_\_\_ (date).

No



2. Do you currently hold any other licenses or specialty certifications, including occupational therapy or any other health related field, in California or in any other state?

Yes If yes, please provide a list and details below.  No

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3. Has any health related professional licensing or disciplinary body in any state, territory or foreign jurisdiction, or any branch of the military, denied, limited, placed on probation, restricted, suspended, cancelled or revoked any professional license, certificate, or registration granted to you, or imposed a fine, reprimand, or taken any other action against you?

Yes If yes, please provide details below.  No

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4. Have you ever been convicted of a crime?

Yes If yes, please provide details below.  No

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5. Have you been actively engaged in the practice of occupational therapy (defined as at least 80 hours a month in occupational therapy, including direct client care, clinical activity, supervision, administration or teaching) in the past five years?

Yes  No

*Please attach a copy of your resume or Curriculum Vitae to this application.*

6. Please describe your related practice activities within the past five years.

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7. Have you ever ceased practice for one year or more?

Yes If yes, please provide details below.  No

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8. Please describe any mentoring or supervisory positions you have been involved with in the past five years.

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9. Please describe any teaching or public speaking experience within the last five years. Please relate this experience to the specific area of expertise.

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10. Have you ever been involved in an accreditation process?

Yes If yes, please provide details below.  No

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11. Why do you feel you are qualified to be a reviewer of advanced practice applications?

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**Section III: Affidavit**

**I declare, under penalty of perjury of the laws of the State of California, that all of the information contained herein and evidence or other credentials submitted herewith are true and correct.**

**Further, I certify that I have read and understand the disclaimer listed below.**

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

**Disclaimer:** Licensees are prohibited from making any claim or any advertisement in which they represent themselves as being affiliated in any way with the California Board of Occupational Therapy. Licensees shall not represent themselves as being an expert, a Board "expert," hold themselves out as holding any credential, or use any designation based on their participation in the Expert Reviewer Program. By signing the affidavit in Section III, you indicate that you understand the prohibitions concerning Board affiliation and advertising. Failure to comply may result in disciplinary action.

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Revised (1/11)

## WHAT ARE MY CONSUMER RIGHTS AND RESPONSIBILITIES?

- Receive competent professional services.
- Verify the credentials of the licensed professional and know the names and titles of licensed professionals who provided services.
- Receive clear explanation of the services being offered or provided.
- Refuse any services offered.
- Know what records will be kept and how to get copies (Any mandate reporting law?)
- File a complaint with the Missouri Board of Occupational Therapy about a licensed professional or an unlicensed practitioner.
- If you are a person with a disability, you may request and may be provided reasonable accommodations to access professional services.
- To be treated with courtesy and respect.
- To maintain an ethical and professional relationship (without financial, sexual or other expectations).

## FOR MORE INFORMATION:

If you would like information regarding licensure please call or write:

### Missouri Board of Occupational Therapy

3605 Missouri Boulevard  
Jefferson City, MO 65109

Phone: 573-751-0877  
Fax: 573-526-3489  
Website: [www.pr.mo.gov](http://www.pr.mo.gov)

## STAFF MEMBERS

Sandy Stuenkel, Licensing Technician II

Vanessa Beauchamp, Executive Director



Division of Professional Registration

3605 Missouri Boulevard  
Jefferson City, MO 65109

Phone: 573-751-0877

Fax: 573-526-3489

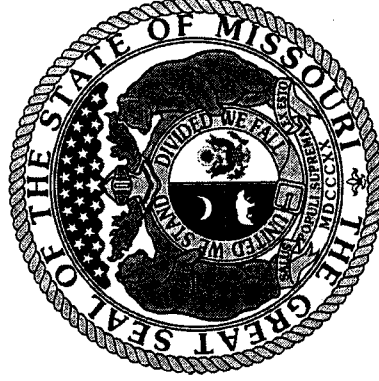
E-Mail: [ot@pr.mo.gov](mailto:ot@pr.mo.gov)

STATE OF MISSOURI

A

# CONSUMER'S GUIDE

MISSOURI BOARD OF  
OCCUPATIONAL THERAPY



STATE OF MISSOURI  
DIVISION OF PROFESSIONAL REGISTRATION  
3605 MISSOURI BOULEVARD  
JEFFERSON CITY, MO 65109

TELEPHONE: 573-751-0877

## MISSOURI BOARD OF OCCUPATIONAL THERAPY MISSION AND RESPONSIBILITY:

The mission of the Missouri Board of Occupational Therapy is to protect the citizens of the state through the licensing of occupational therapists and assistants in addition to assessing their competence to practice. It is also the Board's duty to investigate all complaints against its licensees in a fair and equitable manner.

The Board, in collaboration with the Division of Professional Registration, is responsible for developing, implementing and administering the rules and regulations necessary to carry out the Occupational Therapy Practice Act. These regulations include establishing the requirements for licensure, continuing competency, as well as the ethical standards of conduct for occupational therapy practitioners. The Board will also be responsible for investigating complaints related to the practice of occupational therapy.

## WHAT IS OCCUPATIONAL THERAPY?

"Occupational Therapy," the use of purposeful activity or interventions designed to achieve functional outcomes which promote health, prevent injury or disability and which develop, improve, sustain or restore the highest possible level of independence of any individual who has an injury, illness, cognitive impairment, psychosocial dysfunction, mental illness, developmental or learning disability, physical disability or other disorder or condition. It shall include assessment by means of skill observation or evaluation through the administration and interpretation of standardized or non-standardized tests and measurements. Occupational therapy services include, but are not limited to:

(a) The assessment and provision of treatment in consultation with the individual, family or other appropriate persons;

(b) Interventions directed toward developing, improving, sustaining or restoring daily living skills, including self-care skills and activities that involve interactions with others and with the environment, work readiness or work performance, play skills or leisure capacities or enhancing educational performances skills;

(c) Developing, improving, sustaining or restoring sensorimotor, oral-motor, perceptual or neuromuscular functioning; or emotional, motivational, cognitive or psychosocial components of performance and

(d) Education of the individual, family or other appropriate persons in carrying out appropriate interventions.

Such services may encompass assessment of need and the design, development, adaptation, application or training in the use of assistive technology devices; the design, fabrication or application of rehabilitative technology such as selected orthotic devices, training in the use of orthotic or prosthetic devices; the application of ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness; This is the scope of practice as defined in the Missouri Board of Occupational Therapy Statute.

## WHAT IS A LICENSED OCCUPATIONAL THERAPIST?

A licensed occupational therapist is a person licensed to practice occupational therapy as defined above and whose license issued pursuant to sections 324.050 to 324.089.

## WHAT IS A LICENSED OCCUPATIONAL THERAPY ASSISTANT?

A licensed occupational therapy assistant is a person licensed to assist an occupational therapist in the delivery of occupational therapy services in compliance with federal regulations and rules promulgated.

## HOW DO I FIND A LICENSED OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT?

Licensed occupational therapists and licensed occupational therapy assistants are employed in many different settings. A list of licensees can be obtained from the web-site or you may wish to consult your local yellow pages.

## WHAT DO I DO IF I SUSPECT THAT AN OCCUPATIONAL THERAPIST OR OCCUPATIONAL THERAPY ASSISTANT HAS ACTED IN AN UNPROFESSIONAL MANNER?

If you suspect that someone is practicing without a license or have acted in an unprofessional manner you may report such to the Missouri Board of Occupational Therapy by filing a written complaint. Complaint forms can be found on the web-site. Verbal complaints are not accepted.

## To Help Your Professional Relationship With Your Speech-Language Pathologist, You Should:

- ◆ Answer all health-related questions completely and accurately.
- ◆ Ask questions to help you understand your disorder and your treatment.
- ◆ Follow any instructions that your speech-language pathologist may give you.

## COMPLAINTS — What To Do If You Have a Complaint

To file a complaint, you may call the Board office at (916) 263-2666 and request a complaint form. Or, you may send a letter to the Board office summarizing your grievance. The Board reviews complaints pertaining to fraud, incompetence, unlicensed practice, sexual misconduct, or conviction of a criminal offense related to the profession. Complaints regarding general business practices or personality conflicts are not within the jurisdiction of the Speech-Language Pathology and Audiology Board.

## The Speech-Language Pathology and Audiology Board (SLPAB)

The Speech-Language Pathology and Audiology Board is a state agency within the Department of Consumer Affairs.

The Speech-Language Pathology and Audiology Board licenses and regulates speech-language pathologists and audiologists. The Board's mission is to protect the consumer by requiring adherence to statutes and regulations designed to ensure the qualifications and competency of providers of speech-language pathology and audiology services.

### Speech-Language Pathology and Audiology Board

1422 Howe Avenue, Suite 3  
Sacramento, CA 95825-3204

(916) 263-2666

FAX: (916) 263-2668

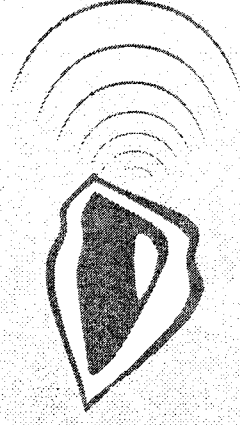
website: [www.dca.ca.gov/slpab](http://www.dca.ca.gov/slpab)

e-mail: [slpab@dca.ca.gov](mailto:slpab@dca.ca.gov)



## A CONSUMER GUIDE TO

# SPEECH-LANGUAGE PATHOLOGY



## What You Should Know About Speech Problems



Rev. 04/00

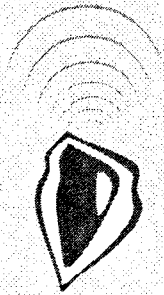
# A Consumer Guide to SPEECH-LANGUAGE PATHOLOGY

## What Is a Speech-Language Pathologist?

A speech-language pathologist is a licensed health care professional who screens, identifies, assesses, refers, and provides treatment to persons with — or at risk for — speech, voice, language, communication, swallowing, and related disabilities.

## How to Locate a Speech-Language Pathologist

Speech-language pathologists work in a variety of settings, including private practices, clinics, hospitals, and schools. To locate a licensed speech-language pathologist, you may obtain a referral from your primary care physician or pediatrician, a public health nurse, or a personal friend. Speech-language pathologists can also be located in your local telephone yellow pages under "Speech & Language Pathologists" or "Speech Therapists."



Speech and hearing clinics may be available:

- ◆ In the local community.
  - ◆ At a college or university.
  - ◆ In a hospital or medical clinic.
- You may call professional organizations for assistance in locating a speech-language pathologist. The Speech-Language Pathology and Audiology Board cannot refer you to a practitioner.

## Guidelines for Judging a Speech-Language Pathologist's Professional Qualifications

To practice in the state of California, an individual must hold a current, valid, speech-language pathology license from the Speech-Language Pathology and Audiology Board.

To get a license, the individual must have obtained the appropriate master's degree or equivalent, completed the specified number of clinical practicum hours, worked in the speech-language pathology field under supervision for not less than 36 weeks, and passed the national written exam.

Certain settings are exempt from licensure (working in public preschools, elementary or secondary schools, and federal agencies).

You may check the status of a speech-language pathologist's license by calling the Board at (916) 263-2666.

## When To Use Services of a Speech-Language Pathologist

Anyone at any age can have a speech or language problem. The earlier the problem is diagnosed and therapy begun, the better the chances of successful treatment.

Speech and language development is not a separate function but a continuous process involving every aspect of the individual — intellectual, motor, emotional, and social. Therefore, problems of speech and language may need not only speech and language evaluations, but also medical or psychological evaluations.

## How a Speech-Language Pathologist Will Help

Speech-language pathologists are trained to evaluate speech and language problems. They plan and carry out programs to correct or modify the disorder or to develop other means of communicating. A speech-language pathologist also counsels individuals and families in managing the problem.

Speech-language pathologists are often members of health care teams. Depending upon the nature of the problem, they may work with physicians, surgeons, orthodontists, psychologists, educators, counselors, or social workers.

## **If You Think You May Need Hearing Aids, You Should:**

Have a hearing evaluation performed by a licensed audiologist before making any purchases.

Many audiologists prescribe, fit, and sell hearing aids. An audiologist who sells hearing aids must be licensed with the Bureau of Hearing Aid Dispensers as a hearing aid dispenser, in addition to being licensed by the Speech-Language Pathology and Audiology Board as an audiologist.

## **COMPLAINTS — What To Do If You Have a Complaint**

To file a complaint, you may call the Board office at (916) 263-2666 and request a complaint form. Or, you may send a letter to the Board office summarizing your grievance. The Board reviews complaints pertaining to fraud, incompetence, unlicensed practice, sexual misconduct, or conviction of a criminal offense related to the profession. Complaints regarding general business practices or personality conflicts are not within the jurisdiction of the Speech-Language Pathology and Audiology Board.



## **The Speech-Language Pathology and Audiology Board (SLPAB)**

The Speech-Language Pathology and Audiology Board is a state agency within the Department of Consumer Affairs. The Speech-Language Pathology and Audiology Board licenses and regulates speech-language pathologists and audiologists. The Board's mission is to protect the consumer by requiring adherence to statutes and regulations designed to ensure the qualifications and competency of providers of speech-language pathology and audiology services.

### **Speech-Language Pathology and Audiology Board**

**1422 Howe Avenue, Suite 3  
Sacramento, CA 95825-3204**

**(916) 263-2666**

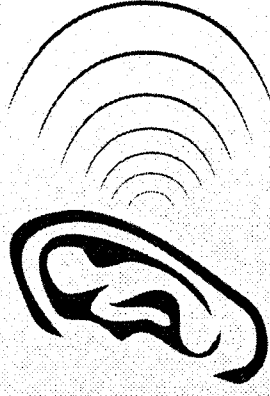
**FAX: (916) 263-2668**

**website: [www.dca.ca.gov/slpab](http://www.dca.ca.gov/slpab)**

**email: [slpab@dca.ca.gov](mailto:slpab@dca.ca.gov)**

## **A CONSUMER GUIDE TO**

# **AUDIOLOGY**



## **What You Should Know About Hearing Problems**



## A Consumer Guide to

# AUDIOLOGY

## What Is an Audiologist?

An audiologist is a licensed health care professional who identifies, assesses, and manages disorders of the auditory, balance, and other neural systems.

## How to Locate an Audiologist

Audiologists work in a variety of settings, including private practices, clinics, hospitals, and schools. To locate a licensed audiologist, you may obtain a referral from your primary care physician or pediatrician, a public health nurse, or a personal friend. Otolaryngologists (ear, nose, and throat doctors) may also refer you or have an audiologist on staff. You can also check under "Audiologists" in the yellow pages of your telephone book.

Speech and hearing clinics may be available:

- ◆ In the local community.
- ◆ At a college or university.
- ◆ In a hospital or medical clinic.

You may call professional organizations for assistance in locating an audiologist. The Speech-Language Pathology and Audiology Board cannot refer you to a practitioner.

## Guidelines for Judging an Audiologist's Professional Qualifications

To practice in the state of California, an individual must hold a current, valid, audiology license from the Speech-Language Pathology and Audiology Board.

To get a license, the individual must have obtained the appropriate master's degree or equivalent, completed the specified number of clinical practicum hours, worked in the audiology field under supervision for no less than 36 weeks, and passed the national written exam.

Certain settings are exempt from licensure (such as public preschools, elementary or secondary schools, and federal agencies).

You may check the status of an audiologist's license by calling the Board at (916) 263-2666.

## When to Use the Services of an Audiologist

You would seek the services of an audiologist if you or someone you know is having difficulty hearing.

It may be difficult for you to determine if a child is having hearing problems. You might consult an audiologist for a child if:

- ◆ The child has difficulty understanding what people are saying.
- ◆ You think the child is speaking differently than other children of the same age.
- ◆ As an infant, the child does not respond to sounds or people's voices.

## What the Audiologist Will Do:

- ◆ Test how well you hear sounds of different pitches.
- ◆ Test how well you understand speech at different levels of loudness.
- ◆ Do special tests, if necessary, to further identify what type of hearing problem you have.

An audiologist can evaluate your hearing, determine whether you have a hearing loss, and make recommendations for hearing health care. This may include a referral to a physician or recommendations for hearing aids or other amplifying devices or methods to modify the listening environment.



## To Help Your Professional Relationship With Your Audiologist, You Should:

Answer all health-related questions completely and accurately.

Ask questions to help you understand the results of your hearing tests and the recommendations of your audiologist.

## Consumer Information

### What You Should Know About Occupational Therapy Professionals and Their Services

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What is an occupational therapist? What is an occupational therapy assistant?

Occupational therapists are licensed rehabilitation care professionals who work to restore or improve physical abilities, promote behavioral changes, adapt surroundings, and teach new skills; the goal is to have the individual achieve her or his best physical and/or mental functioning in daily life tasks. Occupational therapists provide these services on the referral or prescription of a physician, physician assistant, or nurse practitioner.

Occupational therapy assistants provide treatment according to a plan developed by or in collaboration with a licensed occupational therapist. They must work under the supervision of a licensed occupational therapist or a licensed physician.

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When would I use the services of a New York occupational therapist?

Occupational therapy practitioners help people adapt to a variety of challenges:

- developmental disabilities
- learning disabilities
- job-related injuries
- neurological problems
- orthopedic injuries
- birth defects
- stroke
- psychosocial disorders
- chemical dependency
- age-related disorders

They help with:

- impaired physical functioning which hampers the ability to perform daily life tasks
  - psychosocial problems which hamper the ability to function in daily life
  - special needs which require modification of the physical environment and/or use of specialized equipment and technologies (e.g., changes in the home or job site for a person in a wheelchair)
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What credentials do New York occupational therapists and occupational therapy assistants have?

New York licensed occupational therapists have completed a minimum of a bachelor's degree in occupational therapy, including studies in anatomy and physiology, medical and psychosocial conditions, and human development. In addition, they have satisfactorily completed at least six months of supervised experience and have passed a State-approved licensing examination.

New York certified occupational therapy assistants have completed an associate's degree in occupational therapy, including studies in similar areas with an emphasis on technical application; these programs usually require the completion of at least three months of supervised experience.

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How do I locate an occupational therapist?

Occupational therapists work in a variety of settings, including private offices, hospitals, clinics, nursing homes and schools. They may also provide therapy in your home.

Check with your physician, hospital or school, or ask people you know who have had a successful experience with a particular professional. You can also check under "Occupational Therapists" in the yellow pages of your telephone book. You may also call professional organizations for assistance in identifying member providers. The State Board for Occupational Therapy cannot refer you to a practitioner.

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What can I expect to happen during a session with an occupational therapy practitioner?

If an occupational therapy evaluation indicates that occupational therapy is needed, the occupational therapist will design a program of functional activities to improve:

- strength and endurance
  - balance and coordination
  - functional mobility
  - hand function
  - judgement and problem-solving abilities in daily life
  - activities of daily living and self-care skills
- 

What questions should individuals with disabilities ask about accessing services?

Ask such questions as whether the service location is physically accessible (curb cuts, ramps, restrooms, etc.) as well as whether there is a Telecommunication Device for the Deaf (TDD) and parking for people with disabilities.

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What records does my occupational therapist retain? Can anyone else get them?

Your file includes a record of your evaluation, treatment plan, and treatment notes. Occupational therapists must keep client records for six years or until the client turns 22, whichever is longer.

Generally, your records are confidential unless you approve their release. Ask your professional about exceptions to this. If you want a copy of your records, provide your occupational therapist with a written request. You may be charged a reasonable fee to offset the cost of providing copies.

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Will my health insurance cover occupational therapy services?

It may. Many occupational therapists participate in health care plans. Review your insurance plan's benefits with your insurance provider.

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To help your professional relationship with your occupational therapist you should:

- answer all health-related questions completely and accurately;
  - ask questions to help you understand your evaluation and treatment plan; and
  - express your opinions and personal values to help your occupational therapist develop a program that will meet your needs.
- 

### Verifying a New York license:

New York licensed professionals must display a current New York registration certificate; this certificate lists the professional's name, address, and dates of the registration period. Occupational Therapy professionals must reregister every three years to practice in New York. Some professionals also display their original New York license, diploma, licenses from other states, and membership certificates. You may verify an individual's license and registration on this site

## FREQUENTLY ASKED QUESTIONS

### CONSUMER QUESTIONS

**Q. WHO CAN PERFORM ACUPUNCTURE?**

**A.** Acupuncturists who maintain a valid license issued by the Acupuncture Board and physicians licensed by the Medical Board of California. A dentist or podiatrist licensed in California may also practice acupuncture, only within the scope of their respective licenses and if they have completed the necessary training required by their respective licensing board.

**Q. I WOULD LIKE TO SEE AN ACUPUNCTURIST, CAN YOU REFER ME TO ONE?**

**A.** No. The Acupuncture Board licenses acupuncturists. It is unable to provide referrals. You may want to check with an association. The Board maintains a list of acupuncture associations. Once you are provided the name of an acupuncturist, you may call the Acupuncture Board to verify the status of an acupuncturist, i.e., valid, delinquent, or action against the license.

**Q. CAN YOU TELL ME WHETHER AN ACUPUNCTURIST HAS HAD A COMPLAINT FILED AGAINST THEM? WHAT ABOUT AN ADVERSE ACTION FILED AGAINST THEM?**

**A.** No. Complaints and/or investigations are not subject to public disclosure. An accusation is a formal charge brought before a court against a person, stating that they are guilty of some punishable offense. If an accusation has been filed, it is subject to public disclosure. Details regarding the actual accusation filed must be requested in writing.

**Q. WHAT IS AN ACUPUNCTURIST ALLOWED TO DO?**

**A.** An acupuncturist is allowed to engage in the practice of acupuncture, electroacupuncture, perform or prescribe the use of oriental massage, acupressure, moxibustion, cupping, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health pursuant to **Business & Professions Code Section 4937**.

**Q. WHAT CAN I EXPECT?**

**A.** Needles are sterile, generally cause no bleeding upon entry or removal, with little or no pain being felt; however, slight bruising may be experienced on occasion. The number of treatments necessary will depend upon your condition, if your symptoms are chronic or acute and your health in general. The needles may vary in size, depending upon your condition and the course of treatment prescribed. In addition to needling your treatment may also include a variety of non-needling techniques such as moxibustion (heat), acupressure, herbal formulas, etc. One advantage of acupuncture treatment is the absence of serious side effects which may result from the use of prescription drugs.

**Q. WHAT DO THE INITIALS "O.M.D." STAND FOR?**

**A.** The initials O.M.D. stand for "Oriental Medical Doctor", this is an academic title (similar to Ph.D.). This title may only be used by those licensed acupuncturists who possess an earned doctorate degree, from a California accredited, approved and/or authorized educational institute as set forth in Section 94760 of the California Education Code. These initials must be used in conjunction with the representation that the individual is a licensed acupuncturist as set forth in

**Business & Professions Code, Section 4927 and 4937, the California Code of Regulations, Title 16, Section 1399.456, and Attorney General Opinion No. 87-103.**

**Q. CAN AN ACUPUNCTURIST CALL THEMSELF A DOCTOR?**

**A. See California Code of Regulations, Title 16, Section 1399.456.**

**Q. DO I NEED A REFERRAL FROM MY REGULAR DOCTOR TO SEE AN ACUPUNCTURIST AND WILL MY INSURANCE COVER ACUPUNCTURE TREATMENT?**

**A. An acupuncturist is considered a primary care provider and a referral may or may not be required for insurance purposes. Many insurance companies do cover acupuncture treatment. For more information on insurance, please contact either your insurance company or an acupuncture association.**

**Q. ARE ACUPUNCTURISTS REQUIRED TO USE DISPOSABLE NEEDLES?**

**A. Yes. It is unprofessional conduct for an acupuncturist to use a needle more than once. California Code of Regulations, Title 16, Section 1399.454.**

**Q. CAN AN ACUPUNCTURIST GIVE INJECTIONS OF ANY KIND?**

**A. No. Never. Acupuncturists cannot give injections, nor can they perform acupuncture with a hypodermic needle, pursuant to California Code of Regulations, Title 16, Section 1399.451(f).**

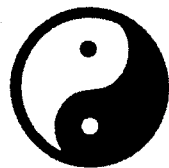
**Q. I READ AN ADVERTISEMENT WHERE AN ACUPUNCTURIST CLAIMS THE ABILITY TO CURE MY DISEASE. IS THIS LEGAL?**

**A. No. Pursuant to California Code of Regulations, Title 16, Section 1399.451(b) it is improper for an acupuncturist to disseminate any advertising which represents in any manner that they can *cure* any type of disease, condition or symptom.**

**Q. DOES CALIFORNIA HAVE RECIPROCITY WITH OTHER STATES?**

**A. No. The Acupuncture Board does not recognize reciprocity, nor does it accept for licensure those individuals who take and pass the national examination (administered by the National Certification Commission for Acupuncture and Oriental Medicine).**

A Consumer's Guide to  
**Acupuncture  
and Asian  
Medicine**



California Department of Consumer Affairs  
ACUPUNCTURE BOARD





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The mission of the California Acupuncture Board is to benefit, educate, and protect the public through regulation of licensure; development of education standards; provision of consumer information; and enforcement of the Acupuncture Licensure Act.

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Additional copies of this publication are available from  
Department of Consumer Affairs  
**CALIFORNIA ACUPUNCTURE BOARD**  
444 North 3rd Street, Suite 260  
Sacramento, CA 95811

For more information call 916/445-3021,  
or visit the California Acupuncture Board Web site  
at [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov).

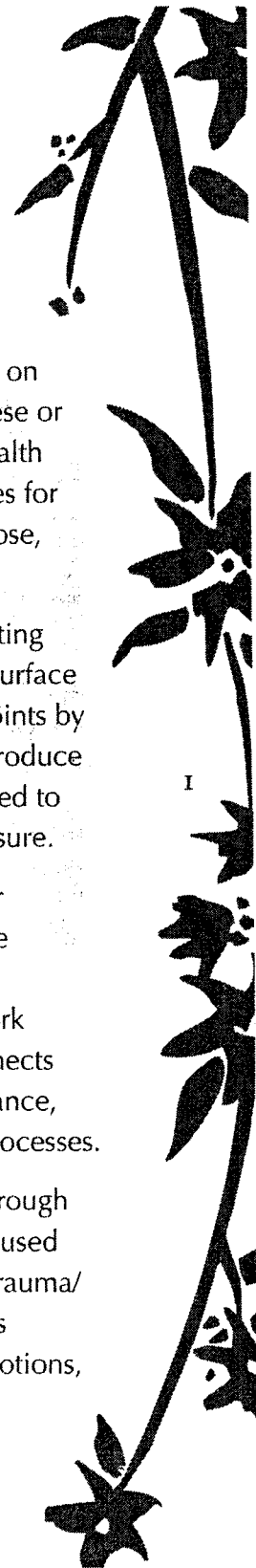
## What is Acupuncture and Asian Medicine?

The theory and practice of acupuncture is based on Asian medicine (also known as traditional Chinese or Oriental medicine), a comprehensive natural health care system that has been used in Asian countries for thousands of years to preserve health and diagnose, treat, and prevent illness.

Acupuncture treats health conditions by stimulating "acu-points" found at specific locations on the surface of the body. Acupuncturists stimulate the acu-points by inserting very thin needles through the skin to produce physiological effects. Other methods are also used to stimulate acu-points, such as heat or finger pressure.

The general theory of acupuncture is that proper physiological function and health depend on the circulation of nutrients, substances, and energy called Qi (pronounced "chee") through a network of "channels" or "meridians." This network connects every organ and part of the body, providing balance, regulation, and coordination of physiological processes.

Pain and ill health result when the flow of Qi through the body is disrupted or blocked. This can be caused by many things, including disease, pathogens, trauma/injuries, and medication (side effects), as well as lifestyle factors such as overwork, poor diet, emotions, lack of rest, and stress.



A C O N S U M E R S G U I D E T O  
A C U P U N C T U R E A N D A S I A N M E D I C I N E

Stimulation of the appropriate acu-points through acupuncture treatments helps to restore sufficient, continuous, and even flow of Qi and other nutrients

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The aim is not only  
to eliminate or alleviate  
symptoms ... but to treat  
the underlying cause ... and  
improve the quality of life.

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throughout the body,  
restoring health  
and balance to  
the body while  
relieving pain and  
other symptoms.

The acupuncturist  
uses a sophisticated  
and complex

2 system of diagnostic methods that take into consideration the person as a whole, discerning the body's pattern of disharmony rather than isolated symptoms. The aim is not only to eliminate or alleviate symptoms, but more importantly to treat the underlying cause, increase the ability to function, and improve the quality of life.

Acupuncture and Asian medicine is one of the newest primary health care professions in California. The potential benefits of acupuncture are widely recognized, and it is steadily being integrated with mainstream health care. More than 15 million Americans have tried acupuncture and Asian medicine since it was introduced in the United States in the 1970s. The risk of side effects from acupuncture is low and the potential benefits are high. Knowing what

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to expect from acupuncture will help patients get the most benefit from their treatments. The purpose of this booklet is to help consumers approach acupuncture treatment from an informed perspective.

## Endorsement by the National Institutes of Health

In November 1997, the National Institutes of Health (NIH) convened a panel of 12 distinguished physicians and scientists to review the history, licensing, practice, and current status of clinical research on the effectiveness of acupuncture.

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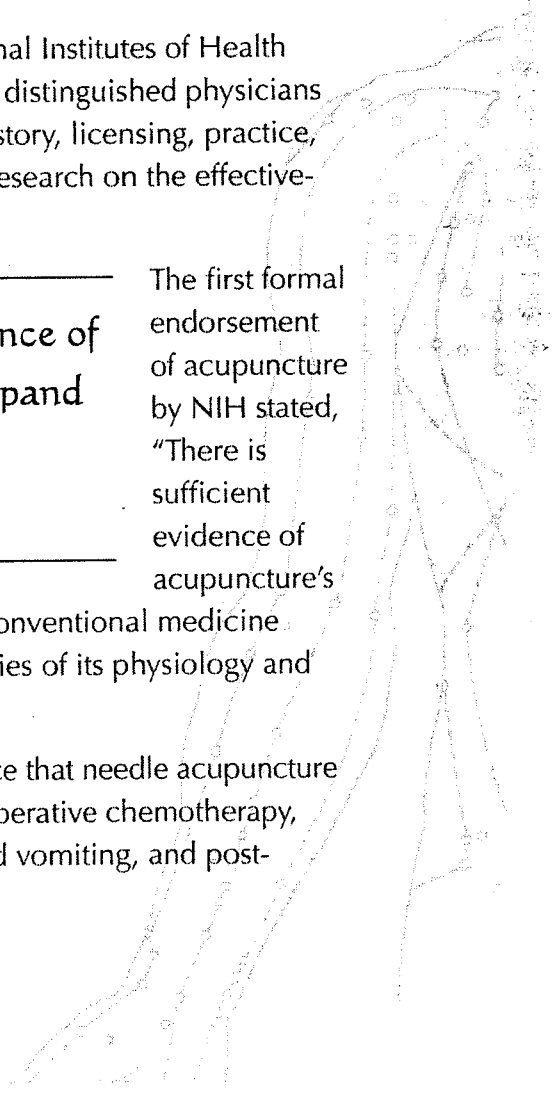
***“There is sufficient evidence of acupuncture’s value to expand its use into conventional medicine ...”***

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The first formal endorsement of acupuncture by NIH stated, “There is sufficient evidence of acupuncture’s

value to expand its use into conventional medicine and to encourage further studies of its physiology and clinical value.”

The panel found clear evidence that needle acupuncture is effective for relief of post-operative chemotherapy, pregnancy-related nausea and vomiting, and post-



A C O N S U M E R ' S G U I D E T O  
A C U P U N C T U R E A N D A S I A N M E D I C I N E

operative dental pain. Other benefits from acupuncture which are still under consideration include relief of post-operative pain, addiction, stroke rehabilitation, carpal tunnel syndrome, osteoarthritis, headache, tennis elbow, fibromyalgia, menstrual cramps, and asthma. The panel noted that the World Health Organization identified more than 40 conditions for which acupuncture may be helpful. The panel found that one of the advantages of acupuncture is that the incidence of adverse effects is substantially lower than that of many drugs or other accepted medical procedures used for the same condition.

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## Licensed Acupuncturists in California

The State of California began licensing acupuncturists in 1976, and in 1979 was the first state in the nation to recognize qualified practitioners as primary health care professionals. To qualify for licensing in California, individuals must meet specified educational requirements and pass a comprehensive State licensing examination. Once licensed, acupuncturists are required to renew their license every two years and complete continuing education as a condition of renewal. Licensed acupuncturists are required to post their license in a conspicuous location in their place of business.



## What to Expect From Acupuncture Treatment

Knowing what to expect from an acupuncture treatment will make you feel more comfortable about the experience.

**Determine Your Goals** Are you looking for a primary health care practitioner, or someone to work with your current physician? Are you seeking short-term treatment for a specific complaint, or do you want the prevention-oriented, holistic approach to the health of mind, body, and spirit that acupuncture and Asian medicine can provide? Knowing what your expectations are—and communicating them to your practitioner—will help you get the most from your treatment.

**Select a Practitioner** Ask your friends, relatives, doctor, or your health plan for a referral to a reputable practitioner. You can access a list of professional associations or verify a license through the California Acupuncture Board's Web site at [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov).

Once you have a list of names, call the practitioners' offices and ask questions. Find out about their training, length of practice, which aspects of acupuncture and Asian medicine they employ, any specializations, and their experience in treating your ailment. You may also want to ask about the cost of treatment.

**Diagnosis** An acupuncturist's diagnosis is determined in part by using methods similar to other health care practitioners: Asking patients for a thorough history of their health, diet, exercise patterns, and chief complaints; performing a physical exam, ordering laboratory tests, X-rays or MRIs, and making a referral to a specialist, if necessary. The acupuncturist also uses unique diagnostic techniques, for example, taking the patient's pulse on both wrists and observing the tongue and complexion. The three pulses felt on each wrist are believed to correspond to certain organs and functions. Following the diagnosis, the practitioner should explain to you the nature of your problem, recommend a treatment plan, and give you an anticipated prognosis (outcome).

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Being informed and understanding what to expect will make you feel more comfortable about the experience.

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**Treatment Procedures** Modern acupuncture needles are stainless steel, and are between one-half and three inches long, ultra-fine, and quite flexible. They are pre-sterilized, non-toxic, and disposable (single-use). When the needles are tapped into the skin, there may not be any sensation. Much depends on the location (hands and feet tend to be more sensitive),

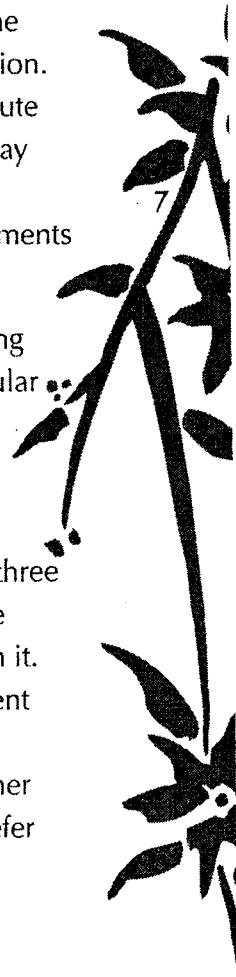
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the condition being treated, and the acupuncturist's technique. Needles are typically placed in several acu-points and are usually left in about 20 to 40 minutes. The goal is to normalize the circulation of Qi and blood by stimulating the energy point, which encourages the body's natural healing process. Stimulation can be done by rotating the needles manually or attaching electrodes to send a weak electric current through the needles (electroacupuncture).

The number of treatments needed depends upon the duration, severity, and nature of your health condition. Two or three treatments may be sufficient for an acute condition, while a series of five to 15 treatments may be needed to resolve chronic conditions. Some degenerative conditions may require ongoing treatments over a long period of time.

Other techniques may include moxibustion (burning herbs to heat acu-points), cupping (suction), auricular therapy (ear acupuncture), *tui na* (Asian massage), and acupressure.

Patients should evaluate their progress after each session. Some relief should be apparent in two or three sessions, or six to eight sessions for more pervasive conditions. If you see encouraging signs, stick with it. Ask your practitioner questions about your treatment and improvement. If your response to treatment is not satisfactory, the practitioner may consider further diagnostic exams, modify the treatment plan, or refer to an appropriate practitioner, if necessary.





A C O N S U M E R S G U I D E T O  
A C U P U N C T U R E A N D A S I A N M E D I C I N E

**Treatment Precautions** Having an acupuncture treatment if you are very hungry or tired is not recommended.

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If you see encouraging signs, stick with it. Ask your practitioner questions about your treatment and improvement.

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Occasionally, some bruising may occur after treatment. If you have a bleeding disorder or are on blood thinning medications, you should inform your acupuncturist before undergoing treatment.

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If you are pregnant or have a pacemaker, tell the acupuncturist so that the appropriate herbs and acu-points will be chosen.

**Herbal Therapy** In the course of your treatment Chinese herbal remedies may be prescribed. They may be dispensed as raw herbs or in pills, capsules, granules, or tinctures which make them easier to ingest. Most herbal formulas can treat a wide variety of symptoms while stimulating the body's natural healing process.

Acupuncturists are the only licensed health care professionals in California who are required to be trained and tested for competency in prescribing herbal medicine. Chinese herbal medicine has been practiced safely and effectively for centuries and has the greatest potential for beneficial results when prescribed by

a trained professional who recognizes both the benefits and risks.

In recent years, herbs have become very popular to self-treat many conditions. They are available in health food stores, supermarkets, and on the Internet. While herbs are promoted as safe, gentle, inexpensive, "natural" alternatives to pharmaceutical drugs, many health care professionals have concerns about safety, effectiveness, and potential misuse of herbal products, especially when self-prescribed. There are also questions of purity, strength, and standardization of herbs.

The California Acupuncture Board strongly recommends consulting an acupuncturist before beginning any herbal therapy. It is also very important to inform both your physician and acupuncturist of all the products you are currently

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**Most herb formulas can treat a wide variety of symptoms while stimulating the body's natural healing process.**

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reactions, and watch for possible interactions. If you have an allergic reaction to any herbs, let your acupuncturist know.

taking (drugs, herbs, other supplements) so they can monitor effectiveness, ensure safety from adverse

## Conditions Treated

How effective the treatment is depends on the severity and nature of the condition being treated. Acupuncturists are trained to identify conditions that may require referral to a specialist, so it is important for you to provide detailed information about your condition so that important medical problems are not overlooked.

If you are under the simultaneous care of different health practitioners, it is important to keep all of them informed about your treatments to ensure there are no adverse interactions.

The following is a list of health conditions commonly treated by licensed acupuncturists.

- allergies/asthma
- anxiety/depression
- arthritis/joint problems
- back pain
- bladder/kidney problems
- constipation/diarrhea
- colds/influenza
- cough/bronchitis
- dizziness
- drug/alcohol/smoking addiction
- fatigue
- gastrointestinal disorders
- gynecological disorders
- headache/migraine
- heart problems/  
palpitations
- high blood pressure
- immune system  
deficiency
- knee pain
- menopausal discomfort
- musculoskeletal injuries
- pre-menstrual syndrome
- paralysis/numbness
- rhinitis
- sciatica
- sexual dysfunction
- side effects of  
chemotherapy
- sinusitis
- skin problems
- stress/tension
- stroke rehabilitation
- tendonitis

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It is important to keep all your providers informed about your treatments.

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## Who Can Benefit From Treatment?

Patients of acupuncture range from infants to senior citizens. They may be seeking an alternative to Western medicine or it may be their last hope for relief, having exhausted other methods of treatment for a chronic condition. Or, an acupuncturist may be their first choice of health care practitioner for a low-risk form of treatment with few side effects.

II

## What About Insurance Coverage?

Some California insurance plans include acupuncture treatment in their policies. Ask your insurer about coverage or reimbursement. Some plans that do not routinely cover acupuncture may pay for treatments if they are recommended by a physician. Many acupuncturists are providers for traditional PPO and HMO plans. Acupuncturists are currently covered under California State Medi-Cal and Worker's Compensation (Note: Subsequent laws passed by the California Legislature may affect this coverage.)

## California Acupuncture Board

The California Acupuncture Board (Board) licenses and regulates the profession according to the Acupuncture Licensure Act, which identifies acupuncture as a primary health care profession. The Board is an autonomous body within the Department of Consumer Affairs. The primary responsibility of the Board is to protect consumers from incompetent, unprofessional, and fraudulent practitioners.

The Board establishes standards for the approval of educational programs, oversees the administration of the licensing examination, issues new and renewal licenses, and handles enforcement issues when complaints are received. The Board strives to promote safe practice through the improvement of educational training standards.

For complete information on the responsibilities of the California Acupuncture Board, please visit the Board's Web site at [www.acupuncture.ca.gov](http://www.acupuncture.ca.gov).

## How Are Complaints Filed?

A complaint should be filed by anyone who believes that a licensed acupuncturist engaged in illegal or unethical activities related to their professional responsibilities. Anyone may file a complaint, and the Board reviews each complaint received.

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The most effective complaints are those that contain first-hand, verifiable information.

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All complaints **MUST** be in writing and include the names, addresses, and phone numbers of both the complainant and the licensee. Please

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explain, in your own words, the nature and facts of your complaint. Include as much information as possible, including any documentary evidence available. You may file a complaint online or use the consumer complaint form found on the Board's Web site under the tab "Consumers."

The most effective complaints are those that contain first-hand, verifiable information. While anonymous complaints will be reviewed, they may be impossible to pursue without documented evidence of the allegations made.

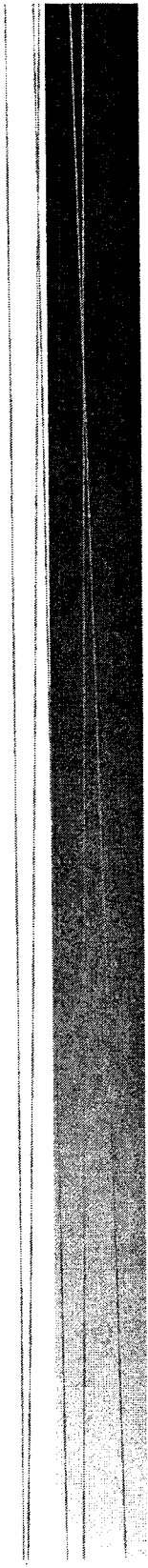
Complaints should be sent to:

CALIFORNIA ACUPUNCTURE BOARD  
444 North 3rd Street, Suite 260,  
Sacramento, CA 95811





California Department of Consumer Affairs  
ACUPUNCTURE BOARD  
444 North 3rd Street, Suite 260  
Sacramento, CA 95811



DEPARTMENT OF CONSUMER AFFAIRS

**PHYSICAL THERAPY BOARD OF CALIFORNIA****General Office Practice Protocols/FAQs**

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**How do I obtain the services of a physical therapist?**

**What if the physical therapist billed me for services he/she said they did not provide?**

**Who is ultimately responsible for my treatment, the physical therapist, physical therapist assistant or the unlicensed individual that was assisting my physical therapy with my care?**

**What can I do if I am getting physical therapy in my home and the physical therapist is billing for services not provided?**

**Is it common practice to be seen only by a physical therapist assistant or a physical therapy aide?**

**Are the individuals providing physical therapy care to me required to identify themselves as a physical therapist, physical therapist assistant, and/or physical therapy aide?**

**How can I verify if a person is licensed to practice physical therapy in California?**

**How do I obtain the services of a physical therapist?**

Physical therapists in California need a diagnosis from a licensed health care professional who is authorized by his/her license to diagnose (i.e. physicians, dentists, podiatrists, chiropractors, etc.). Physical therapists are not allowed to diagnose. Although a physical therapist may perform an evaluation without a diagnosis, one is required prior to the physical therapist providing any physical therapy treatment. A referral is not required by the State of California.

Once you have a diagnosis, the physical therapist will evaluate your condition, discuss the evaluation with you, and implement a personalized treatment plan and therapy goals.

If a third party payor (i.e. health insurance) will be billed for your physical therapy services, please follow the policy and procedures of that agency. For example, the third party payor may also require you to have a referral along with the diagnosis from a licensed professional who is authorized to diagnose in order for your services to be reimbursed. The Physical Therapy Board of California does not regulate insurance companies or billing. Therefore, it is your responsibility to understand how your services will be paid.

**What if I was billed for physical therapy services that were not provided to me?**

You should only be billed for services provided. If you feel there was double billing or you have concern that you were billed for services that were not provided, submit a [complaint form](#) to the PTBC and it will be reviewed. However, if you are being charged for services that are not covered by your insurance or for services that were beyond what is covered by your insurance, the PTBC does not have jurisdiction. It is ultimately the patient's responsibility to know what their insurance covers.



**Who is ultimately responsible for my care, the physical therapist, physical therapist assistant, or physical therapist aide?**

Physical therapists are responsible for the care provided by the physical therapist assistant and/or the physical therapy aide under their supervision. The supervising physical therapist delegates and should be monitoring and supervising the care provided to their patients by the physical therapist assistant and/or aide.

**What can I do if I am receiving physical therapy in my home and the physical therapist is billing for services not provided?**

You should only be billed for services provided. If you feel there was double billing or you do have concern that you were billed for services that were not provided, submit a [complaint form](#) to the PTBC and it will be reviewed. However, if you are being charged for services that are not covered by your insurance or for services that were beyond your insurance coverage, the PTBC does not have jurisdiction.

**What if I am seen only by a physical therapist assistant or physical therapy aide is this common practice?**

The physical therapist must initially evaluate each patient and formulate a treatment program goals and plan based on the evaluation prior to the physical therapist assistant or aide providing any treatment to the patient. The physical therapist must first evaluate your condition in order to delegate and to determine what elements of the treatment plan may be assigned to a physical therapist assistant or physical therapy aide.

When services are provided by a physical therapy aide, the supervising physical therapist shall at some point during the treatment day, provide direct service to the patient as treatment for the patient's condition, or to further evaluate and monitor the patient's progress, and shall correspondingly document the patient's record.

**Are the individuals providing physical therapy care required to identify themselves as a physical therapist, physical therapist assistant, and/or physical therapy aide?**

Physical therapists and physical therapist assistants must disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least an 18-point type. A physical therapist or physical therapist assistant in a practice or an office, whose license is prominently displayed in the office, may opt not to wear a name tag.

**How can I verify if a person is licensed to practice physical therapy?**

To verify a physical therapist or physical therapist assistant license, please [click here](#).

Email the Consumer Protection Program [cps@dca.ca.gov](mailto:cps@dca.ca.gov)

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DEPARTMENT OF CONSUMER AFFAIRS

**PHYSICAL THERAPY BOARD OF CALIFORNIA****Consumer Information/FAQs****What is a physical therapist? A physical therapist assistant? A physical therapy aide?****How do I verify a physical therapist's or physical therapist assistant's license?****What credentials does a California physical therapist have? A physical therapist assistant? A physical therapy aide?****How do I obtain the services of a physical therapist?****What services and treatments can I expect?****Where do physical therapists practice?****How will I know the identity of the person providing my physical therapy care?****What questions should individuals with disabilities ask about accessing services?****What records does my physical therapist retain, and for how long? Can anyone request a copy?****How can I evaluate the quality of physical therapy services?****What are my rights to request a copy of my medical record?****Can a physical therapist or physical therapist assistant have a personal relationship with their patient? What if it's consensual?****Do you have concerns and/or problems with communicating with the physical therapist?****Examples of other reasons for discipline.****Can the PTBC refer me to a physical therapist in my area?****What is a physical therapist? A physical therapist assistant? A physical therapy aide?**

A *physical therapist* is a licensed health care professional who evaluates a patient's physical status, establishes a plan of care and goals, then administers treatments to promote optimal health. Physical therapists seek to relieve pain, improve the body's movement and function, maintain cardiopulmonary function, and limit disabilities resulting from injury or disease.

A *physical therapist assistant* is licensed and provides physical therapy care under the supervision of a physical therapist.

A *physical therapy aide* is an unlicensed person who assists a physical therapist and is under the direct and immediate supervision of a physical therapist. The physical therapy aide can only provide direct care to the patient if the supervising physical therapist is within audible reach.

**How do I verify a physical therapist's or physical therapist assistant's license?**

Online verification is available on the PTBC's website.

**What credentials does a California physical therapist have? A physical therapist assistant? A physical therapy aide?**

A California licensed *physical therapist* has completed an accredited four-to-six-year college program. If educated in a foreign country, proof of an equivalent professional degree to that issued by a United States accredited physical education program that entitles them to practice as a physical therapist in the country where the diploma was issued is required. The educational requirements in physical therapy, including studies in biology, basic medical sciences, and clinical experience as required in a US accredited program. Studies focus on the evaluation and treatment of the heart, lungs, muscles, bones, and the nervous system. In addition, California physical therapists have passed the national physical therapy examination and an examination on the laws and regulations governing the practice of physical therapy in California.

A California *physical therapist assistant* has completed an accredited two-year college program or has met the equivalency requirements, which include studies in anatomy and physiology. Clinical experience is also required for both avenues. In addition, California physical therapist assistants have passed the national physical therapist assistant examination and an examination on the laws and regulations governing the practice of physical therapy in California.

A *physical therapy aide* is not licensed and is not required to meet any education requirements and has no formal training. Training is received on-site and under the supervision of a licensed physical therapist.

**How do I obtain the services of a physical therapist?**

Physical therapists in California are required to have a diagnosis from a licensed health care professional who is authorized by his/her license to diagnose (i.e. physicians, dentists, podiatrists, chiropractors, etc.). Although a physical therapist may perform an evaluation without a diagnosis, one is required prior to the physical therapist providing any physical therapy treatment. Under California law a referral is not required by the State of California.

Once you have a diagnosis, the physical therapist will evaluate your condition, discuss the evaluation with you, and implement a personalized treatment plan and therapy goals.

If a third party payor (i.e. health insurance) will be billed for your physical therapy services, you will need to follow the policy and procedures of that agency. For example, the third party payor may also require you to have a referral along with the diagnosis from a licensed professional who is authorized to diagnose in order for physical therapy services to be reimbursed. The Physical Therapy Board of California does not regulate insurance companies or billing. Therefore, it is your responsibility to understand how your services will be paid.

**What services and treatments can I expect?**

Physical therapists, as part of the evaluation, will among other things, take your health history, observe your posture and movement or any limitations you may have, and use their hands to palpate and evaluate problem areas. From this evaluation, the physical therapist then establishes a plan of care (treatment) with goals and an estimated time to expect these goals to be achieved. The physical therapist should solicit your participation in establishing the treatment plan and goals.

Treatment may include, but is not limited to, the following:

therapeutic use of hands

exercise programs

application of therapeutic modalities such as ultrasound and electrical stimulation

training in daily living activities

## patient education

Physical therapist assistants under the supervision of a physical therapist also work to assist in reaching your treatment goals.

Most important, if you have questions regarding your physical therapy treatment plan and goals, direct your questions to the physical therapist.

**Where do physical therapist practice?**

*Physical therapists* practice in a wide variety of settings, including hospitals, rehabilitation clinics, private practices, home care, schools, and in industry.

*Physical therapist assistants* may assist in the provision of physical therapy treatment without the physical therapist being in the same facility, as long as the physical therapist assistant is supervised pursuant to Section 1398.44 of Title 16 California Code of Regulations. A physical therapist assistant is only permitted to provide physical therapy treatment as directed by the supervising physical therapist. A physical therapist assistant is not allowed to perform the initial evaluation, re-evaluations, change a treatment plan, supervise another physical therapist assistant and/or physical therapy aide or conduct a discharge and discharge summary.

*Physical therapy aides* may only provide physical therapy treatment in the same facility as the supervising physical therapist and is required to have direct and immediate supervision pursuant to Section 1399 of Title 16 California Code of Regulation. Treatment by a physical therapy aide must also include treatment by the supervising physical therapist on that same day.

**How will I know the identity of the person providing my physical therapy care?**

*Physical therapists* and *physical therapist assistants* shall disclose, while working, his/her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A physical therapist or physical therapist assistant in a practice or an office, whose license is prominently displayed in that office, may opt not to wear a name tag.

Each supervising licensed physical therapist shall require all *physical therapy aides*, *applicants*, *students* and *interns* performing patient related tasks under his or her supervision to display while working his or her name and working title on a name tag in at least 18-point type.

For more information on the license status of a physical therapist or physical therapist assistant, please [click here](#) to verify a license.

**What questions should individuals with disabilities ask about accessing services?**

- Is the location of where you are obtaining physical therapy services physically accessible (curb cuts, ramps, restrooms, etc.)?
- Is a Telecommunication Device for the Deaf (TDD) and disability parking available?
- Does the practitioner makes house calls?

**What records does my physical therapist retain and for how long? Can anyone request a copy?**

Your file contains a record that reflects your evaluation, treatment plan, and actual treatment notes. Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.

Generally, patient records are confidential unless you authorize release of your records. Ask your health care professional about exceptions to this. If you want a copy of your records, provide your physical therapist with a

written request. The facility or physical therapist may charge a reasonable fee to offset the cost of providing copies.

### **How can I evaluate the quality of physical therapy services?**

In evaluating the quality of the care given to you, you should be able to answer Yes to each statement below:

- A physical therapist performed my evaluation.
- The physical therapist explained my treatment plan and goals.
- The physical therapist addressed my concerns regarding my treatment plan and goals.
- The physical therapist wore an identification badge showing name and title or the license was posted in a place that was visible.
- My privacy was maintained.

### **What are my rights to request a copy of my medical record?**

For information on your rights to request a copy of your own medical record, click on [Medical Records](#).

### **Can a physical therapist or physical therapist assistant have a personal relationship with their patient? What if it was consensual?**

Physical therapy **never** includes sex. It also never includes verbal sexual advances or any **other** kind of sexual contact or behavior. Sexual contact of any kind in the course of a physical therapy treatment is illegal and unethical. Harm may arise from the exploitation of the patient by the physical therapy provider to fulfill his/her own needs or desires, as well as from the physical therapy provider's loss of objectivity necessary for effective physical therapy. All physical therapy providers are trained and educated to know that this kind of behavior is inappropriate and can result in license revocation.

By the nature of their profession, physical therapy providers are trusted and respected, and it is normal for patients to feel attracted to someone who is attentive, kind and caring. However, a physical therapy provider who accepts or encourages these normal feelings in a sexual way, is using the trusted physical therapy relationship to take advantage of the patient.

### **What happens if I have concerns and/or problems communication with the physical therapist?**

Some concerns or problems between a patient and a licensee are caused by a breakdown in communication. Some common misunderstandings are the scope of services available, the quality of professional services, and the timeliness of those services. Direct and open communication can be beneficial to both the patient and the professional in seeking an acceptable resolution.

If you cannot resolve a problem and you believe that the issue of concern is a violation of the Physical Therapy Practice Act, you may file a complaint with the PTBC by completing the Physical Therapy Board's Consumer Complaint Form. The PTBC investigates complaints based upon the specific information you provide.

### **Examples of other reasons for discipline?**

Examples of other violations of law not mentioned in the [Reasons for Discipline](#) that should be brought to the PTBC's attention include: conviction of a criminal offense related to the profession; mental illness; practicing outside the scope of the provider's license or below accepted community standards; and breach of confidentiality and deceptive advertising.

### **Can the PTBC refer me to a physical therapist in my area?**

No, the PTBC does not provide referrals.

Email the Consumer Protection Program [cps@dca.ca.gov](mailto:cps@dca.ca.gov)

This web site contains PDF documents that require the most current version of Adobe Reader to view. To download click on the icon below.



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## CONTACT INFORMATION

### RESPIRATORY CARE PRACTITIONER LICENSE VERIFICATION

Respiratory Care Board of California  
(916) 323-9983 Toll-free (866) 375-0386  
[www.rcb.ca.gov](http://www.rcb.ca.gov)\*

### REGISTERED NURSE LICENSE VERIFICATION

Board of Registered Nursing  
(916) 322-3350 Toll-free (800) 838-6828  
[www.rn.ca.gov](http://www.rn.ca.gov)\*

### HOME MEDICAL DEVICE RETAIL FACILITY LICENSE VERIFICATION

Department of Health Services  
(916) 650-6518  
[www.dhs.ca.gov](http://www.dhs.ca.gov)  
E-mail: [fdbinfo@dhs.ca.gov](mailto:fdbinfo@dhs.ca.gov) (24-hour response)

### HOME HEALTH AGENCY LICENSE VERIFICATION

Department of Health Services  
(916) 552-8700 Toll-free (800) 236-9747  
[www.dhs.ca.gov](http://www.dhs.ca.gov)

### ACCREDITATION VERIFICATION Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

(630) 792-5771  
[www.jcaho.org](http://www.jcaho.org)\*

### Community Health Accreditation Program (CHAP)

(800) 656-9656  
[www.chapinc.org](http://www.chapinc.org)\*

### Accreditation Commission for Health Care, Inc.

(919) 785-1214  
[www.achc.org](http://www.achc.org)\*

\* Verification available through Website

*A consumer safety guide for respiratory care  
provided in your home*

*Photographs courtesy of the American Association for Respiratory Care (except cover)*

The Respiratory Care Board is mandated to protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice respiratory care. It is further mandated that "protection of the public shall be the highest priority for the Respiratory Care Board of California in exercising its licensing, regulatory, and disciplinary functions."



# Home Care

*What you should  
know about your  
respiratory home  
care provider*



May 2006



Respiratory Care Board of California  
Department of Consumer Affairs





As advancements in health care delivery and efforts to control healthcare costs continue, more patients are being cared for at home. Many of these patients depend upon the use of respiratory equipment and supplies such as:

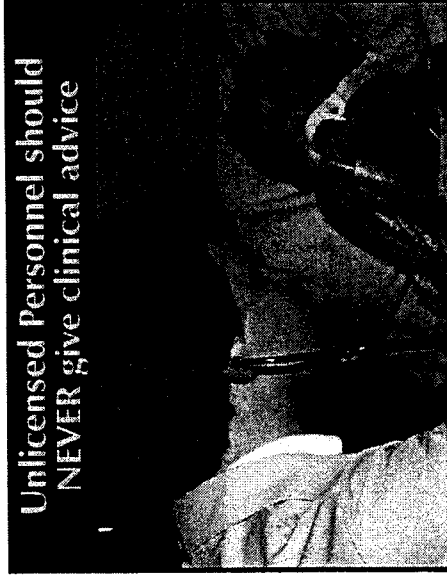
- oxygen delivery systems and supplies
- positive airway pressure (i.e., CPAP, BiPAP) devices and supplies
- intermittent positive pressure breathing (IPPB) devices and supplies
- ventilatory devices and supplies
- nasotracheal or tracheal suctioning devices and supplies
- apnea monitors, alarms, and supplies
- tracheostomy care devices & supplies, and
- respiratory diagnostic testing devices and supplies (i.e., pulse oximetry, CO<sub>2</sub> monitoring, and spirometry).

Patient care provided through the use of respiratory care devices is governed by the Respiratory Care Practice Act and requires licensure as a respiratory care practitioner, other qualified licensed personnel, or by a person exempted from the Act. Self-care by the patient or gratuitous care by a friend or member of the family is one of those exemptions.

Some consumers employ home health agencies (HHAs) to provide care and/or use durable medical equipment provided by home medical device retail facilities (HMDRFs). Both HHAs and HMDRFs are required by law to be licensed with the Department of Health Services.

While HHAs are regulated to provide patient care, HMDRFs are regulated to deliver, install, maintain, replace or instruct in the use of home medical devices; not provide patient care. Regulatory inspections of HMDRFs stop at the instruction in the use of equipment from a mechanical perspective. Inspections do not include the review of whether an HMDRF provides patient care or whether personnel are qualified to provide patient care, however, some HMDRFs employ licensed respiratory care practitioners to provide an extra measure of care, although this is not required for licensure as a HMDRF.

### Unlicensed Personnel should NEVER give clinical advice



Approximately one in four HMDRFs also seek voluntary accreditation by one of three nationally recognized accreditation agencies. While accreditation is costly and rigorous, many HMDRFs seek accreditation to validate their business practices. Part of the accrediting process reviews whether patient care is provided and, if it is, that it is provided in accordance with recognized standards and state laws. In response to concerns with the HMDRF industry, Federal legislation recently enacted will require all HMDRFs to be accredited in the near future (i.e., 2007-2012).

Personnel entering homes in support of the home care patient include respiratory care practitioners, registered nurses, vocational nurses, and non-licensed personnel including equipment delivery personnel. There is a vast range of education and experience among these personnel, from people having some familiarity with patient care and/or medical equipment to those that have been educated, trained, and competency tested in patient care and sophisticated respiratory equipment.

Respiratory care practitioners, often referred to as respiratory therapists, are one of the three licensed health care professionals who most often work at patients' bedsides, with the other two being physicians and registered nurses. Respiratory therapists specialize in providing evaluation of and treatment to patients with breathing disorders or difficulties as a result of heart and lung disorders, and also provide diagnostic, educational, and rehabilitative services.

### CONSUMER CHECKLIST

If you, or someone you know, suffer from a respiratory ailment and receive care in the home setting, be an informed consumer:

- ✓ Know the professional status of any person providing patient care and verifying the license status with the appropriate licensing agency; and
- ✓ Check the license status of any HHA or HMDRF (if employed).

While not required by state law, verification of whether an HHA or HMDRF holds voluntary accreditation can be helpful when making healthcare provider decisions.



Consumer  
ALERT

# Respiratory Care



## UNLICENSED PRACTICE ALERT

*If you or someone you know is receiving medical care at home, this message is for you.*

Advancements in health care delivery and measures to control related costs have resulted in more patients being cared for at home. Many patients rely upon care and/or equipment received through home care companies.

**WARNING:** Many home care providers are employing unlicensed and/or unqualified personnel to perform respiratory care. Some providers are even calling these personnel "respiratory technicians." Not only is this illegal, it is jeopardizing the health and safety of patients.

In California, respiratory care may only be provided by **licensed** respiratory care practitioners (a.k.a. respiratory therapists), and few other licensed personnel, regardless of the setting.

Be an informed consumer. Verify if your respiratory care provider is licensed. For more information or to report unlicensed activity, please contact our Board. We are here to serve you.

### Verify Licensure

Online at [www.rcb.ca.gov](http://www.rcb.ca.gov) or  
by calling toll-free 1-866-375-0386



Respiratory Care Board  
Department of Consumer Affairs  
State of California



# Respiratory Care

## What is respiratory care?

Respiratory care includes, but is not limited to: Employing life support mechanical ventilation for patients who can't breathe adequately on their own; administering medications in aerosol form; maintaining artificial airways (e.g., tracheostomy or intubation); studying disorders of people with disruptive sleep patterns; and conducting asthma education and smoking cessation programs.

**Respiratory therapists are one of three licensed health care professionals who most often work at patients' bedsides with the other two being physicians and registered nurses**

## Who are typical patients?

Typical respiratory care patients range in age from newborns to the elderly. Patients often suffer from asthma, chronic obstructive pulmonary disease (COPD), bronchitis, lung cancer, drowning accidents, heart attacks, birth defects, emphysema, strokes, cystic fibrosis, or sleep apnea.

## In which settings is respiratory care provided?

Respiratory care is provided in hospitals (e.g., emergency rooms and intensive-care, critical-care, neonatal/pediatric and acute-care units), hyperbaric oxygen facilities, homes, skilled nursing facilities, and various laboratories (e.g., pulmonary, cardiopulmonary, blood gas, and sleep-testing), and during flight transports.

## What is the Respiratory Care Board?

The Respiratory Care Board is the state regulatory agency responsible for licensing respiratory care practitioners and enforcing laws related to respiratory care. Specifically, the Board is mandated to "...protect the public from the unauthorized and unqualified practice of respiratory care and from unprofessional conduct by persons licensed to practice..." Protection of the public is its highest priority.

## Interested in a respiratory care career?

Successful completion of an intense two-year college program and competency examination are minimum requirements for licensure. For more information on this exciting career, please request a free brochure.



## Respiratory Care Board

444 North 3rd Street, Ste. 270, Sacramento, CA 95834  
Telephone: (916) 323-9983 Toll-Free: (866) 375-0386  
E-mail: [rcbinfo@dca.ca.gov](mailto:rcbinfo@dca.ca.gov)  
Web: [www.rcb.ca.gov](http://www.rcb.ca.gov)

## **AGENDA ITEM 10**

### **DISCUSSION REGARDING MOSCONE-KNOX PROFESSIONAL CORPORATION ACT AND THE IMPLICATION REGARDING HEALING ARTS LICENSEES BEING EMPLOYED BY PROFESSIONAL MEDICAL CORPORATIONS.**

Information from the Physical Therapy Board's website are attached for review.

## DEPARTMENT OF CONSUMER AFFAIRS

**PHYSICAL THERAPY BOARD OF CALIFORNIA****Corporations**

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On November 3, 2010, the Physical Therapy Board of California (Board) voted to rescind the 1990 Resolution which determined that the offering of physical therapy services by a corporation, not organized as a professional corporation, was permitted by the Physical Therapy Practice Act.

The motion to rescind the Resolution was in response to a letter received from the American Physical Therapy Association (APTA) alleging the Resolution was an underground regulation. The APTA's allegation was substantiated by Government Code §11340.5(a). Additionally, at the request of Assembly Member Pedro Nava, Legislative Counsel issued an opinion, dated September 29, 2010, that a physical therapist who knowingly provides physical therapy services, as an employee of a corporation organized under the Moscone-Knox Professional Corporation Act to practice medicine, is subject to discipline by the Board for aiding and abetting the corporation's unlawful practice of physical therapy. The decision prohibits employment of a physical therapist by any professional corporation except those owned by physical therapists and Naturopaths. It also states that since the California Corporations Code does not specifically include physical therapists on the list of those who may be employed by a medical corporation, a physical therapist is prohibited from providing physical therapy services as an employee of a medical, podiatric or chiropractic corporation.

It is the intent of the Board to commence enforcing the opinion of Legislative Counsel as of November 3, 2010. However, those general corporations formed before November 3, 2010, as a result of the 1990 Resolution, will not be subject to discipline by the Board.

The California Physical Therapy Association (CPTA) has offered to assist physical therapists who are in a business arrangement affected by the motion. They have created a toolkit to review career and business options and to facilitate compliance with the law. This toolkit is available to all PTs, not just CPTA members. Please contact them at CCAPTA.org or (916) 929-APTA for further information.

**What Type of a Corporation Can I Form?**

A **Professional Corporation** consisting solely of physical therapists.

Pursuant to Section 2693 of the Business and Professions Code, "The name of a physical therapy corporation and any name or names under which it may render professional services shall contain the words 'physical therapy' or 'physical therapist', and wording or abbreviations denoting corporate existence."

Sections 2690-2693 of the Business and Professions Code, relating to physical therapy corporations are available under Laws and Regulations on the PTBC's website.

The PTBC does not require individuals to register with the PTBC in order to form a corporation, nor does the name of the corporation need approval by the PTBC; however, the corporation must conform to the applicable statutes and regulations. For further information on how to establish a Physical Therapy Practice or form a Corporation, please consult an Attorney, the California Physical Therapy Association, or the Secretary of State's office.

*The PTBC is unable to provide consultation services regarding establishing a corporation.*

**Attorney General Opinion on Limited Liability Company**

A health care profession is prohibited from being a Limited Liability Company.

AG Opinion No. 04-103 - Limited Liability Company

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www.apta.org

October 27, 2010

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CLT-LANA

Physical Therapy Board of California  
2005 Evergreen Street, Suite 1350  
Sacramento, CA 95815

Re: **Agenda Item #19, Meeting of November 2-3, 2010**  
**Request to Remove Underground Regulations**

Dear Members of the Board:

The American Physical Therapy Association (APTA), the national organization representing physical therapists and physical therapist assistants, has over 75,000 members nationwide. These include over 6,000 who are also members of the California Physical Therapy Association (CPTA), the APTA chapter for the State of California.

The APTA has noted that the website of the Physical Therapy Board of California (Board or PTBC) contains a number of statements that are in the nature of interpretations of the Physical Therapy Practice Act or related California law. In connection with Item #19 on the Agenda for the Board's meeting of November 2-3, 2010, the APTA would like to draw the Board's attention to the following items (Statements) posted on the Board's website:

- (#1) Physical Therapy Corporation Ownership by a Layperson
- (#2) Physical Therapist Assistants in the Realm of Corporation Ownership

Copies of the two Statements are attached as Annex A.

Each of the two Statements addresses questions concerning the business arrangements under which physical therapy services may be offered. Statement #1 takes the position that a corporation that is not organized as a professional corporation "may employ . . . licensed physical therapists to provide physical therapy services." Statement #2 repeats the foregoing interpretation (which it attributes to a letter from the Board dated 09/11/1997) and then goes on to address the highly unusual situation in which a physical therapist assistant (PTA) directly employs a licensed physical therapist (PT) =

Chief Executive Officer

John D. Barnes

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Combined Sections Meeting  
February 9-12, 2011  
New Orleans, LA

PT 2011  
June 8-11, 2011  
National Harbor, MD

that is, a situation in which the PTA conducts the business as an individual rather than through a corporation, limited liability company, or other entity.

### Request

The APTA hereby requests the Board to rescind the two Statements and to remove them from its website. As a threshold matter, the Board's posting the Statements appears to have been a procedural error, that is, a violation of Government Code § 11340.5(a). That clause provides that no agency shall "issue" a guideline or other rule that is a "regulation" within Government Code § 11342.60 and that is not exempt from the rulemaking procedures of the Administrative Procedure Act (APA)<sup>1</sup> unless the item has been adopted as a regulation and filed with the Secretary of State pursuant to Chapter 3.5 (Administrative Regulations and Rulemaking) of Part 1 (State Departments and Agencies) of Division 3 (Executive Department) of Title 2 (Government of the State of California) of the Government Code. Even if the Board's action with respect to the Statements does not amount to an issuance within § 11340.5(a), that clause makes clear that the Board may not "utilize, enforce, or attempt to enforce" either Statement. Because the Board may not even utilize (much less enforce) the Statements, their presence on the Board's website accomplishes nothing worthwhile.

Furthermore, as a substantive matter the Statements misstate the law. The contention that a general business corporation owned by laypersons may employ a PT to provide physical therapy services is mistaken. Under the law of California, a PT who accepts such employment is subject to discipline under the Business and Professions Code. Maintaining the Statements on the Board's website serves only to mislead the public.

### Procedural Objection

The Statements should be rescinded and removed from the Board's website because they are underground regulations.

California, like virtually every state, has statutory provisions applicable to rulemaking by executive branch agencies. In general, an agency must give notice of its proposed adoption of a regulation, which shall be published in the California Regulatory Notice Register at least 45 days prior to the close of the public comment period.<sup>2</sup> Interested parties may submit comments in writing.<sup>3</sup> If the agency adopts a regulation it must submit to the Office of

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<sup>1</sup> For this purpose, the Administrative Procedure Act is the part of the California Government Code appearing in Title 2, Division 3, Part 1, Chapter 3.5, commencing with § 11340 that generally governs the adoption, amendment, or repeal of regulations by California state agencies. See the definition of "APA" in 1 CCR § 1.

<sup>2</sup> Government Code § 11346.5 and § 11346.4(a)(5).

<sup>3</sup> Government Code § 11346.5(a)(15).

Administrative Law (OAL) a final statement of reasons, which shall summarize the objections and recommendations made concerning the proposal and explain how the proposed action has been changed or the reasons for making no change.<sup>4</sup>

With some exceptions, the Government Code makes the APA notice-and-comment rulemaking procedures mandatory with respect to every regulation:

11340.5. (a) No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter.

Government Code § 11340.5(a). The statute authorizes the OAL to make and issue determinations as to whether a guideline, standard of general application, or other rule is a regulation within § 11342.600.<sup>5</sup> The Code directs the OAL to adopt regulations for the purpose of carrying out the provisions of Chapter 3.5 (Administrative Regulations and Rulemaking).<sup>6</sup> Pursuant to this directive, the OAL has adopted a set of regulations entitled "Underground Regulations."<sup>7</sup> The OAL regulations define the term "underground regulation" to include any guideline, standard of general application, or other rule that is a "regulation" within § 11342.600 but has not been adopted as a regulation and filed with the Secretary of State pursuant to the APA<sup>8</sup> and is not subject to an express statutory exemption from adoption pursuant to the APA.<sup>9</sup>

The Board did not follow the notice-and-comment rulemaking procedures in connection with the Statements. Therefore, if they are "regulations" within Government Code § 11342.600 and are not exempt from APA rulemaking, then they are underground regulations within the meaning of the OAL regulations.

<sup>4</sup> Government Code § 11346.9(a)(3).

<sup>5</sup> Government Code § 11340.5(b).

<sup>6</sup> The statute provides:

11342.4. The office shall adopt, amend, or repeal regulations for the purpose of carrying out the provisions of this chapter.

Government Code § 11342.4.

<sup>7</sup> The OAL's Underground Regulations are Chapter 2 (Underground Regulations) of Division 1 (Office of Administrative Law) of Title 1 (General Provisions) of the California Code of Regulations, 1 CCR §§ 250-280.

<sup>8</sup> See 1 CCR § 1.

<sup>9</sup> 1 CCR § 250(a).

In fact, the Statements are regulations. The Code defines the term as follows:

11342.600. "Regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.

Government Code § 11342.600. The California Supreme Court has stated:

A regulation subject to the APA thus has two principal identifying characteristics. (See Union of American Physicians & Dentists v. Kizer (1990) 223 Cal. App. 3d 490, 497 [272 Cal. Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. ( Roth v. Department of Veterans Affairs (1980) 110 Cal. App. 3d 622, 630 [167 Cal. Rptr. 552].) Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (Gov. Code, § 11342, subd. (g).)

Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal.4<sup>th</sup> 557, 571, 927 P.2d 296, 304, 59 Cal.Rptr.2d 186, 194 (Cal. 1996).

The Statements satisfy both prongs of the Tidewater test. In the first place, the Statements are intended to apply generally. They are not addressed merely to a particular PT or PTA.<sup>10</sup> In the second place, the Statements obviously interpret a law that is enforced and administered by the Board. In particular, the Statements venture opinions about the kind of business arrangements in which PTs may participate without violating the Physical Therapy Practice Act.

<sup>10</sup> The statute says that a regulation is "of general application," and the Tidewater opinion accordingly says, "[I]f an agency prepares a policy manual that is no more than a restatement or summary, without commentary, of the agency's prior decisions in specific cases and its prior advice letters, the agency is not adopting regulations." 14 Cal.4<sup>th</sup> at 571, 927 P.2d at 305, 59 Cal.Rptr.2d at 195. See Marin v. Costco Wholesale Corporation, 169 Cal. App. 4th 804, 815, 87 Cal. Rptr. 3d 161, 169 (Cal. App. 1st Dist. 2008), a section of a manual was a standard of general application, "not merely a restatement of prior agency decisions or advice letters," citing Tidewater. The Statements, however, are not a mere restatement of the Board's decisions in specific cases and prior advice letters. Statement #1 clearly says that it was based on a resolution of general applicability that the Board's predecessor adopted on 12/14/1990. Statement #2 does refer to a "letter dated September 11, 1997," but that letter evidently derived its message from the 1990 resolution, so the standard of general application preceded the 1997 letter.



The Statements are not exempt from the APA notice-and-comment rulemaking provisions. Several exemptions appear in Government Code § 11340.9, but none covers the Statements.

### Substantive Objection

The Board should rescind the Statements and remove them from the website because they misinterpret the relevant California law.

The Legislative Counsel recently opined that a PT who knowingly provides physical therapy services, as an employee of a corporation organized under the Moscone-Knox Professional Corporation Act (PCA) to practice medicine, is subject to discipline by the Board for aiding and abetting the corporation's unlawful practice of medicine and of physical therapy.<sup>11</sup> Attached as Annex B is a copy of the opinion dated September 29, 2010, that the Legislative Counsel issued to Assembly Member Pedro Nava and a letter of October 21, 2010, from CPTA President Cheryl Resnik to Mr. Nava thanking him for providing the opinion.

The Statements are completely at odds with the opinion of the Legislative Counsel. Each Statement takes the position that a corporation that is not even organized under the PCA "may employ ... licensed physical therapists to provide physical therapy services." The Legislative Counsel's opinion, in stark contrast, takes the position that even a corporation organized under the PCA to practice medicine would be engaged in unlawful practice (of medicine and of physical therapy) if it employed a PT to provide physical therapy services – because employing a PT as a professional employee would not be compliant with the PCA. The "nonprofessional" or "general" corporations

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<sup>11</sup> The opinion notes California's longstanding prohibition against the corporate practice of medicine, which is codified in the Business and Professions Code, §§ 2052 and 2400. A corporation is exempt from the general prohibition if it is organized to practice medicine under the PCA and is practicing in compliance with the PCA. Under the PCA a corporation may render services in only a single profession, except as authorized by Bus. & Prof. Code § 13401.5. This clause authorizes a medical corporation to have as "professional employees" registered nurses, licensed chiropractors, and other licensed healthcare providers – but not physical therapists. The Legislative Counsel concluded:

Because this list [i.e., the list in Bus. & Prof. Code § 13401.5(a)] does not include physical therapists, we think that a physical therapist is prohibited from providing physical therapy services as an employee of a medical corporation.

The Legislative Counsel went on to opine that a corporation organized under the PCA to practice medicine that employed a licensed physical therapist "would be unlawfully engaging in the practice of physical therapy" (page 6) and would be practicing medicine in violation of Bus. & Prof. Code § 2520, the section that prohibits the unlicensed practice of medicine. The opinion said that a PT employed by such a corporation would be subject to discipline by the Board under Bus. & Prof. Code § 2660(h) and (i), which make it a ground for discipline to aid and abet violations of the Medical Practice Act or the Physical Therapy Practice Act, respectively.

mentioned in the Statements would be engaged in the unlawful practice of both physical therapy and medicine,<sup>12</sup> and they clearly would not qualify for the exemption available to professional corporations that practice in compliance with the PCA. In effect, the Statements ascribe to the Legislature an intent to prohibit corporations owned by medical doctors from employing PTs but to allow corporations owned by high-school dropouts to do so – a view of the Legislature that the Board should not embrace.<sup>13</sup>

### Conclusion

For the reasons set forth above, the Board should rescind the Statements and remove them from the website. Retaining them can do harm but not any good. The Statements can do harm by misleading physical therapists about the kind of business arrangements that are permissible under California law. As such, the Statements do a disservice to licensed physical therapists and to the public. Even if the Statements were accurate interpretations of state law – which they are not – they still could accomplish little good because they are underground regulations and do not have the authority of a properly adopted regulation. The Statements do not have even the authority of a declaratory decision issued pursuant to Government Code § 11465.20 and the Model Regulations for Declaratory Decisions adopted by the Office of Administrative Hearings, 1 CCR §§ 1260-1292. Moreover, even if they were valid declaratory decisions the Board would be unable to rely on them as

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<sup>12</sup> The Medical Practice Act defines the practice of medicine broadly in Bus. & Prof. Code § 2052(a) to extend to the activities of any corporation or other person that “practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person.” (Emphasis added.) This definition, particularly the emphasized portion, is so broad that it encompasses all of the scope of practice of physical therapy, which is defined more narrowly in Bus. & Prof. Code § 2620(a). In short, whenever a PT practices physical therapy he/she also is engaged in the practice of medicine as defined in § 2052(a). A corporation can act only through its human employees/agents. Accordingly, if a licensed PT provides physical therapy services as an employee of a general corporation, that corporation is engaged in both the practice of physical therapy and the practice of medicine.

<sup>13</sup> The California Supreme Court has cautioned against ascribing such whimsy to the Legislature:

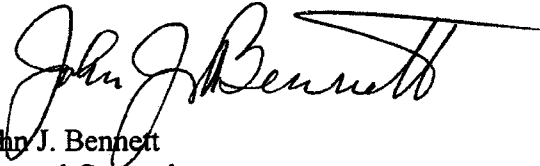
For us to conclude that the Legislature took the categorical view that the agencies now ascribe to it, notwithstanding the involved procedures set forth in section 25205.6, subdivision (a), we would also have to conclude that, all things being equal, the Legislature prefers Rube Goldberg-style rigmarole over more simple approaches. There seems good reason to pause before embracing this view of the statute, and of the Legislature.

Morning Star Company v. State Board of Equalization, 38 Cal. 4th 324, 337-338, 132 P.3d 249, 257, 42 Cal.Rptr.3d 47, 57 (Cal. 2006).

precedents because it has not designated them as precedent decisions. See Government Code § 11465.20(a) and 11425.10(a)(7).<sup>14</sup>

Thank you for your consideration of the APTA's request.

Sincerely,



John J. Bennett  
General Counsel

Annexes

cc: Steven K. Hartzell, Executive Officer, PTBC  
Cheryl Resnik, PT, DPT, President, CPTA  
Stacey DeFoe, MA, CAE, Executive Director, CPTA

[APTA-2010-10-27-remove-PTBC-Statements\_apt]

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<sup>14</sup> An agency's decision to designate a decision as a precedent decision is not rulemaking and need not be done in accordance with APA rulemaking requirements by virtue of Government Code § 11465.20(b). See, however, 2007 OAL Determination No. 6, April 16, 2007, holding that this provision does not apply to the designation of a non-adjudicative decision resulting from a settlement.

# **ANNEX A**



STATE AND CONSUMER SERVICES AGENCY • ARNOLD SCHWARZENEGGER GOVERNOR

**Physical Therapy Board of California**  
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## **PHYSICAL THERAPY CORPORATION OWNERSHIP BY A LAYPERSON**

The Physical Therapy Board of California (Board) has determined that the offering of physical therapy services by a corporation, which is not organized as a professional corporation is not prohibited by the Physical Therapy Practice Act. This is interpreted to mean that such a nonprofessional corporation may employ or retain licensed physical therapists to provide physical therapy services. Laypersons may own all or part of the shares of such a corporation.

The Physical Therapy Examining Committee (now the Physical Therapy Board of California) at the December 14, 1990 committee meeting adopted this resolution (resolution below). The Committee's determination does not extend to the formation of partnerships between physical therapists and layperson or other licensed health care professionals, with the exception of physicians.

It is well settled under California common law that an unlicensed person may not engage in the practice of certain learned professions, including medical professions. (Pacific Employees Insurance Co. v. Pearle Vision Center, Inc. (1983) 143 Cal. App. 3d419, 191 Cal.Rptr. 762) Laypersons may not be partners with healing arts licensees in the provision of their licensed services, nor may such persons otherwise have proprietary interest in such practices. The Board believes this holding to be consistent with the case law cited above.

A partner or other person having ownership interest in a professional practice has the right to manage and control the actions of his or her partner or employee. Such a person who is not professionally licensed may not control decisions, which affect the professional discretion of the licensee and adversely affect the care of the patient. A layperson that is a shareholder in a corporation providing physical therapy services also may not manage or control the professional actions of practice decisions of a physical therapist in the employ of such corporation.

Note: This document is not a declaratory opinion of the Physical Therapy Board of California.

**Resolved that the Physical Therapy Board of California hereby determines:**

1. That the professions covered by the Professional Corporation Act (Corporations Code, Sections 13400-13410) upon its enactment in 1968 were medicine, dentistry and law.
2. That prior to 1968 it had been the interpretation by the governing boards for each of those three professions (Board of Medical Examiners, Board of Dental Examiners, State Bar Board of Governors) that the practice of the profession through a corporation would be a violation of the respective licensing laws.
3. That the bill enacting the Professional Corporation Act in 1968 was sponsored by organizations for the three professions and was sponsored primarily to permit qualification for tax benefits available to a corporate practice under the Internal Revenue Code.
4. That the 1977 revision of the General Corporation Law provided in Section 202 a standard statement of purpose for corporations not intended to be "professional corporations", that standard statement implied (but did not directly prohibit) that the general business corporation would not practice a profession permitted to be incorporated as a professional corporation.
5. That such 1977 revision was based on the pre-1968 interpretation for the three professions as referred to in paragraph 2.
6. That prior to 1968, there had been no occasion to interpret the physical therapy license laws in the context of the practice of the profession through a corporation but if this committee had been requested to provide an interpretation, the interpretation would have been that those licensing laws are for the regulation of the individuals actually providing physical therapy services and are not intended to regulate the business form in which the profession is practiced.
7. That subsequent to 1969 when physical therapy professional corporations were first authorized and prior to 1977 when the General Corporation Law was revised there was no statute specifically prohibiting the practice of the profession of physical therapy through a general (non-professional) corporation. Further, during that same period, the existence of a statutory authorization for a physical therapy professional corporation was no basis to imply a prohibition against the use of a general corporation for the conduct of a physical therapy professional business.
8. That since the interpretation of the licensing laws for the profession of physical therapy as referred to in paragraph 6 is different than the interpretation of licensing laws for the three professions as referred to in paragraph 2, the language of Section 202(b)(1) of the Corporations Code should not be interpreted as a prohibition of the corporate practice of the profession of physical therapy through a general business corporation as long as the individuals actually providing the physical therapy services are licensed physical therapists.

## Article 9. Physical Therapy Professional Corporations

### 1399.30. Citation.

These regulations may be cited and referred to as "Physical Therapy Professional Corporation Regulations."

Note: Authority and reference cited: Sections 2615 and 2696, Business and Professions Code; and Section 13410, Corporations Code.

History:

(1.) New Article 9. (Sections 1399.30-1399.41) filed 8-31-77, Register 77, No. 36.

(2.) Amendment filed 8-13-81, Register 81, No. 33. (3.) Amendment filed 6-29-83, Register 83, No. 27.

### 1399.31. Professional Relationships and Responsibilities Not Affected.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Amendment filed 8-13-81, Register 81, No. 33.

(2.) Repealer filed 6-29-83, Register 83, No. 27.

### 1399.32. Office for Filing.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.

### 1399.33. Application.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.

### 1399.34. Approval and Issuance of Certificates.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer filed 8-13-81, Register 81, No. 33.

### 1399.35. Requirements for Professional Corporations.

A professional corporation shall comply with the following provisions:

(a) The corporation is organized and exists pursuant to the general corporation law and is a professional corporation within the meaning of Moscone-Knox Professional Corporations Act (Section 13400 et seq. of the Corporations Code).

(b) Each shareholder, director and officer (except as provided in Section 13403 of the Corporations Code and Section 2694 of the code) holds a valid physical therapist license. A physical therapist may be a shareholder in more than one professional corporation.

(c) Each professional employee of the corporation who will practice physical therapy, whether or not a director, officer or shareholder, holds a valid physical therapist license.

Note: Authority cited: Sections 2615 and 2696, Business and Professions Code. Reference: Sections 2690 and 2694, Business and Professions Code; and Sections 13401, 13403, 13404, 13405, 13406 and 13407, Corporations Code.

History:

(1.) Amendment filed 8-13-81, Register 81, No. 33. (2.) Amendment filed 10-19-83, Register 83, No. 43.

### 1399.36. Namestyle.

Note: Authority cited: Section 2696, Business and Professions Code.

History:

(1.) Repealer and new section filed 8-2-79, Register 79, No. 31.

(2.) Repealer filed 8-13-81, Register 81, No. 33.

### 1399.37. Shares: Ownership and Transfer.

(a) Where there are two or more shareholders in a professional corporation and one of the shareholders:

(1) Dies; or

(2) Becomes a disqualified person as defined in Section 13401(d) of the Corporations Code for a period exceeding ninety (90) days, his or her shares shall be sold and transferred to the corporation, its shareholders or other eligible licensed persons on such terms as are agreed upon. Such sale or transfer shall not be later than six (6) months after any such death and not later than ninety (90) days after the date the shareholder becomes a disqualified person. The requirements of this subsection shall be set forth in the professional corporation's articles of incorporation or bylaws.

(b) A corporation and its shareholders may, but need not, agree that shares sold to it by a person who becomes a disqualified person may be resold to such person if and when he or she again becomes an eligible shareholder.

(c) The share certificates of a professional corporation shall contain an appropriate legend setting forth the restrictions of subsection (b), where applicable.



STATE AND CONSUMER SERVICES AGENCY • АГЕНСТВО ЗА ЗАЩИТА НА ПРАВЕНАТА СЪВЕТНИКА

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## **PHYSICAL THERAPIST ASSISTANTS IN THE REALM OF CORPORATION OWNERSHIP**

The topic of corporations has long been a confusing matter when it comes to physical therapy. Ultimately there are two different types of corporations in the realm of physical therapy: general and professional. Professional corporations are those, which are owned by a group of licensed physical therapists. General corporations are those in which unlicensed individuals are shareholders, but one's which must employ a licensed physical therapist to provide treatment. The question of whether or not a physical therapist assistant may own and work in a general corporation has arisen. In a letter dated September 11, 1997, the Physical Therapy Board of California acknowledged that "...a nonprofessional corporation may employ or retain licensed physical therapists to provide physical therapy services. Lay persons may own all or part of the shares of such a corporation." That letter specifies the conditions for lay owners as including this condition: "A lay person who is a shareholder in a corporation providing physical therapy services also may not manage or control the professional actions or practice decisions of a physical therapist in the employ of such a corporation."

Please be advised that, with the addition of one special condition, a licensed physical therapist assistant may, as an individual or sole proprietor, employ a licensed physical therapist to provide professional therapy services to the public, under substantially the same conditions as apply to the lay owners of a nonprofessional corporation. But in view of the anomalous, and indeed impermissible, relationship that would otherwise obtain, the physical therapist assistant owner must meet the special condition that in the conduct of that physical therapy practice, the physical therapist assistant shall personally perform no service whatsoever as a physical therapist assistant.

The provisions of Business and Professions Code Section 2655(c) in conjunction with the provisions of Title 16 California Code Regulations, Section 1398.44 necessitate this special condition. Section 2655 (c) defines the essential relationship between the supervising physical therapist and the supervised physical therapist assistant and mandates that "the supervising physical therapist...shall be responsible for the extent, kind, and quality of services provided by the physical therapist assistant". Section 1398.44 of the regulations implements this statutory mandate by enumerating extensive supervisory duties of the physical therapist. It would be fundamentally inconsistent with these statutory and regulatory provisions for the supervising physical therapist to be deterred or inhibited in the exercise of his or her responsibilities to the public, namely to adequately direct and supervise the physical therapist assistant, by reason of the supervisor's status as an employee of the person supervised.

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**Note:** This document is not a declaratory opinion of the Physical Therapy Board of California.



# **ANNEX B**

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A TRADITION OF TRUSTED LEGAL SERVICE  
TO THE CALIFORNIA LEGISLATURE

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September 29, 2010

Honorable Pedro Nava  
Room 2148, State Capitol

**PHYSICAL THERAPISTS: MEDICAL CORPORATIONS - #1021592**

Dear Mr. Nava:

You have asked us whether a physical therapist may be subject to discipline by the Physical Therapy Board of California for providing physical therapy services as an employee of a medical corporation. In analyzing this question, you have asked us to consider whether subdivision (h) of Section 2660 of the Business and Professions Code may be implicated.

Generally, the formation, powers, and duties of corporations are expressed in various statutory provisions of the Corporations Code (see generally, Div. 1 (commencing with Sec. 100), Title 1, Corp. C.). A corporation is a "creature of statute;" therefore, it has only those powers as expressed in a statute (see *Kaysser v. McNaughton* (1936) 6 Cal.2d 248, 253). As a general rule, corporations are prohibited from practicing learned professions, such as medicine (*People v. Cole* (2006) 38 Cal.4th 964, 970-971; *California Assn. of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143 Cal.App.3d 419, 427 (finding that the ban on corporate practice of medicine applies to optometrists); *Benjamin Franklin Life Assur. Co. v. Mitchell* (1936) 14 Cal.App.2d 654, 656-657; *Pacific Employers Ins. Co. v. Carpenter* (1935) 10 Cal.App.2d 592, 594-595; 11 Ops.Cal.Atty.Gen. 236 (1948)). Among the reasons for this prohibition is to avoid the control of the practice of medicine by laypersons (*California Physicians' Service v. Garrison* (1946) 28 Cal.2d 790, 810) and to protect the public from possible abuses stemming from commercial exploitation of the practice of medicine (*Los Angeles County v. Ford* (1953) 121 Cal.App.2d 407, 413).

The rule prohibiting the corporate practice of medicine is codified in the Medical Practice Act (Ch. 5 (commencing with Sec. 2000), Div. 2, B.& P.C.) in Sections 2052 and 2400 of the Business and Professions Code<sup>1</sup> (*California Physicians' Service v. Aoki Diabetes*

<sup>1</sup> All further section references are to the Business and Professions Code unless otherwise indicated.

## Honorable Pedro Nava — Request #1021592 — Page 2

*Research Institute* (2008) 163 Cal.App.4th 1506, 1514). Subdivision (a) of Section 2052 prohibits a person from practicing or holding himself or herself out as practicing any system or mode of treating the sick or afflicted in this state, or diagnosing or treating any physical or mental condition of a person, without having a certificate under the Medical Practice Act or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law (see *SteinSmith v. Medical Board* (2000) 85 Cal.App.4th 458, 460). However, a certificate under the Medical Practice Act is only available for natural persons (see Secs. 2082, 2089, and 2096). Furthermore, Section 2400 makes clear that a corporation does not have the ability to obtain a license or engage in the practice of medicine, as follows:

"2400. Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic."

Exceptions to the rule banning the corporate practice of medicine have been made in various circumstances.<sup>2</sup> Specifically, medical and podiatry corporations are exempt from the rule if they are practicing pursuant to, and in compliance with the Moscone-Knox Professional Corporation Act (Pt. 4 (commencing with Sec. 13400), Div. 3, Title 1, Corp. C.; hereafter the Professional Corporation Act), which authorizes the formation and operation of professional corporations (Sec. 2402). The Professional Corporation Act defines a professional corporation as "a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 [of the Corporations Code] that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5 [of the Corporations Code], pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by

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<sup>2</sup> Health care service plans are specifically authorized to employ physicians (subd. (b), Sec. 1395, H.& S.C.; see also Sec. 2411). The courts have also found authorization for contracting for physician's services, even where the statutory language was not compelling, where there were limitations on improper motives (*Los Angeles County v. Ford*, supra, at pp. 413-414). In addition, arrangements not amounting to employment relationships may be entered into by hospitals and physicians for the provision of medical services (see *Blank v. Palo Alto-Stanford Hospital Center* (1965) 234 Cal.App.2d 377). For purposes of this opinion, we will assume that none of these exceptions apply to the corporation in question here.

## Honorable Pedro Nava — Request #1021592 — Page 3

statute" (Sec. 13401, Corp. C.). Thus, a professional corporation may only render services in a single profession except as authorized under Section 13401.5 of the Corporations Code.

Section 13401.5 of the Corporations Code provides that certain licensed persons "may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation." (Emphasis added.) With respect to medical corporations, subdivision (a) of Section 13401.5 provides that the following licensed persons may be shareholders, officers, directors, or professional employees of the corporation:

- "(a) Medical corporation.
- "(1) Licensed doctors of podiatric medicine.
- "(2) Licensed psychologists.
- "(3) Registered nurses.
- "(4) Licensed optometrists.
- "(5) Licensed marriage and family therapists.
- "(6) Licensed clinical social workers.
- "(7) Licensed physician assistants.
- "(8) Licensed chiropractors.
- "(9) Licensed acupuncturists.
- "(10) Naturopathic doctors."

Section 13401.5 of the Corporations Code thereby liberalizes the language of Section 13401 of the Corporations Code by allowing more than the members of a single profession to participate in the ownership and operation of certain professional corporations.

Pursuant to the doctrine of "expressio unius est exclusio alterius," the enumeration of acts, things, or persons as coming within the operation or exception of a statute will preclude the inclusion by implication in the class covered or excepted of other acts, things, or persons (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403). Courts may not read into a statute an exception not incorporated therein by the Legislature, unless such an exception must reasonably and necessarily be implied (*Phillippe v. Shapell Industries* (1987) 43 Cal.3d 1247, 1265). As a result, we think that only the licensees listed in paragraphs (1) to (10), inclusive, of subdivision (a) of Section 13401.5 of the Corporations Code may be professional employees of a medical corporation. Because this list does not include physical

## Honorable Pedro Nava — Request #1021592 — Page 4

therapists, we think that a physical therapist is prohibited from providing physical therapy services as an employee of a medical corporation.<sup>3</sup>

We next turn to whether a physical therapist may be subject to discipline by the Physical Therapy Board of California (hereafter the board) for providing physical therapy services as an employee of a medical corporation. The Physical Therapy Practice Act (Ch. 5.7 (commencing with Sec. 2600), Div. 2) provides for the licensure and regulation of physical therapists by the board. Section 2660 authorizes the board to revoke or impose probationary conditions upon any license, certificate, or approval issued under the Physical Therapy Practice Act for unprofessional conduct, as follows:

"2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- "(a) Advertising in violation of Section 17500.
- "(b) Fraud in the procurement of any license under this chapter.
- "(c) Procuring or aiding or offering to procure or aid in criminal abortion.
- "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- "(e) Habitual intemperance.
- "(f) Addiction to the excessive use of any habit-forming drug.
- "(g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.
- "(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.

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<sup>3</sup> Furthermore, in 2003, Section 13401.5 of the Corporations Code was amended to authorize naturopathic doctor corporations to employ various licensed professionals, including licensed physical therapists (Ch. 485, Stats. 2003). The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other aspects are made is indicative of an intent to leave the law as it stands in the aspects not amended (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 596).

## Honorable Pedro Nava — Request #1021592 — Page 5

"(i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

"(j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

"(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

"(l) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(m) The commission of verbal abuse or sexual harassment."  
(Emphasis added.)

Section 2691 provides that it constitutes unprofessional conduct and a violation of the Physical Therapy Practice Act "for any person licensed under [the act] to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws." Thus, because the Professional Corporation Act does not permit a physical therapist to provide professional services as an employee of a medical corporation, we think a physical therapist who provides those services could be charged with violating, attempting to violate, or assisting in or abetting the violation of the

## Honorable Pedro Nava — Request #1021592 — Page 6

Professional Corporation Act, and, as a result, could be subject to discipline by the board under Sections 2691 and 2660. However, it is important to note that "the words 'aiding or abetting' in provisions of this kind require scienter or guilty knowledge on the part of one charged with unprofessional conduct" (see 36 Cal.Jur.3d (2010) Healing Arts and Institutions, Sec. 306 (citing *James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109; *Barrett v. Board of Osteopathic Examiners of California* (1935) 4 Cal.App.2d 135, 139)).

In addition, Section 2630 makes it unlawful for a person to practice physical therapy without holding a valid, unexpired, unrevoked license under the Physical Therapy Practice Act. As discussed above, except as provided by statute, neither a corporation nor any unlicensed person or entity may engage, directly or indirectly, in the practice of certain professions, including the legal and medical professions (*People ex rel. State Bd. of Medical Examiners v. Pacific Health Corp.* (1938) 12 Cal.2d 156, 158). Because a medical corporation is not authorized to employ a physical therapist to provide physical therapy services, we think a medical corporation that does so would be unlawfully engaging in the practice of physical therapy. The medical corporation would thereby violate Section 2630 and the physical therapist providing those services could be subject to discipline for aiding or abetting that violation under subdivision (i) or (j) of Section 2660.<sup>4</sup>

Lastly, subdivision (h) of Section 2660 provides that it is unprofessional conduct and grounds for discipline for a physical therapist to aid or abet a violation of the Medical Practice Act. The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. As discussed above, the rule prohibiting corporations from engaging in the practice of medicine is codified in the Medical Practice Act in Sections 2052 and 2400. Section 2402 and the Professional Corporation Act provide an exception to this rule but do not give a medical corporation the authority to employ physical therapists to provide professional services. As a result, we think a medical corporation that employs a physical therapist to provide those services would fall outside the exception provided by Section 2402 and the Professional Corporation Act and would thereby violate Sections 2052 and 2400. Consequently, the physical therapist may be subject to discipline under subdivision (h) of Section 2660 if he or she is found to have aided or abetted in that violation.<sup>5</sup>

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<sup>4</sup> But see the discussion supra regarding required knowledge for "aiding or abetting."


<sup>5</sup> But see the discussion supra regarding required knowledge for "aiding or abetting." In addition, the Medical Practice Act specifies that it does not prohibit the practice of other persons licensed under other provisions of law when that person is engaged in his or her authorized and licensed practice (Sec. 2061). Thus, the physical therapist in question here, if licensed under the Physical Therapy Practice Act, would not, himself or herself, be in violation of subdivision (a) of Section 2052.

Honorable Pedro Nava — Request #1021592 — Page 7

In conclusion, it is our opinion that a physical therapist may be subject to discipline by the Physical Therapy Board of California for providing physical therapy services as an employee of a medical corporation.

Very truly yours,

Diane F. Boyer-Vine  
Legislative Counsel

By   
Stephanie L. Shirkey  
Deputy Legislative Counsel

SLS:dkr





October 21, 2010

Hon. Pedro Nava  
Assembly Member, 35th District  
State Capitol  
P.O. Box 942849  
Sacramento, CA 94249-0035

Re: Legislative Counsel Opinion

Dear Assembly Member Nava:

On behalf of the California Physical Therapy Association (CPTA), I would like to thank you for making available to our lobbyist, Carl London of Rose & Kindel, the opinion of the Legislative Counsel of California, dated September 29, 2010, relating to the legality of a licensed physical therapist's being employed by a corporation owned by one or more medical doctors. This opinion touches on a matter of great importance to the CPTA's members and the public.

My understanding is that you do not object to the CPTA's sharing the opinion with the Physical Therapy Board of California and other parties. Please let me know by October 27, 2010 if my understanding is incorrect. Again, thank you for your interest in this important issue.

Sincerely,

Cheryl Resnik, PT, DPT  
President



LEGISLATIVE  
COUNSEL  
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TO THE CALIFORNIA LEGISLATURE

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September 29, 2010

Honorable Pedro Nava  
Room 2148, State Capitol

### PHYSICAL THERAPISTS: MEDICAL CORPORATIONS - #1021592

Dear Mr. Nava:

You have asked us whether a physical therapist may be subject to discipline by the Physical Therapy Board of California for providing physical therapy services as an employee of a medical corporation. In analyzing this question, you have asked us to consider whether subdivision (h) of Section 2660 of the Business and Professions Code may be implicated.

Generally, the formation, powers, and duties of corporations are expressed in various statutory provisions of the Corporations Code (see generally, Div. 1 (commencing with Sec. 100), Title 1, Corp. C.). A corporation is a "creature of statute;" therefore, it has only those powers as expressed in a statute (see *Kaysser v. McNaughton* (1936) 6 Cal.2d 248, 253). As a general rule, corporations are prohibited from practicing learned professions, such as medicine (*People v. Cole* (2006) 38 Cal.4th 964, 970-971; *California Assn. of Dispensing Opticians v. Pearle Vision Center, Inc.* (1983) 143 Cal.App.3d 419, 427 (finding that the ban on corporate practice of medicine applies to optometrists); *Benjamin Franklin Life Assur. Co. v. Mitchell* (1936) 14 Cal.App.2d 654, 656-657; *Pacific Employers Ins. Co. v. Carpenter* (1935) 10 Cal.App.2d 592, 594-595; 11 Ops.Cal.Atty.Gen. 236 (1948)). Among the reasons for this prohibition is to avoid the control of the practice of medicine by laypersons (*California Physicians' Service v. Garrison* (1946) 28 Cal.2d 790, 810) and to protect the public from possible abuses stemming from commercial exploitation of the practice of medicine (*Los Angeles County v. Ford* (1953) 121 Cal.App.2d 407, 413).

The rule prohibiting the corporate practice of medicine is codified in the Medical Practice Act (Ch. 5 (commencing with Sec. 2000), Div. 2, B.& P.C.) in Sections 2052 and 2400 of the Business and Professions Code<sup>1</sup> (*California Physicians' Service v. Aoki Diabetes*

<sup>1</sup> All further section references are to the Business and Professions Code unless otherwise indicated.

*Research Institute* (2008) 163 Cal.App.4th 1506, 1514). Subdivision (a) of Section 2052 prohibits a person from practicing or holding himself or herself out as practicing any system or mode of treating the sick or afflicted in this state, or diagnosing or treating any physical or mental condition of a person, without having a certificate under the Medical Practice Act or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law (see *SteinSmith v. Medical Board* (2000) 85 Cal.App.4th 458, 460). However, a certificate under the Medical Practice Act is only available for natural persons (see Secs. 2082, 2089, and 2096). Furthermore, Section 2400 makes clear that a corporation does not have the ability to obtain a license or engage in the practice of medicine, as follows:

"2400. Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic."

Exceptions to the rule banning the corporate practice of medicine have been made in various circumstances.<sup>2</sup> Specifically, medical and podiatry corporations are exempt from the rule if they are practicing pursuant to, and in compliance with the Moscone-Knox Professional Corporation Act (Pt. 4 (commencing with Sec. 13400), Div. 3, Title 1, Corp. C.; hereafter the Professional Corporation Act), which authorizes the formation and operation of professional corporations (Sec. 2402). The Professional Corporation Act defines a professional corporation as "a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 [of the Corporations Code] that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5 [of the Corporations Code], pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by

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<sup>2</sup> Health care service plans are specifically authorized to employ physicians (subd. (b), Sec. 1395, H.& S.C.; see also Sec. 2411). The courts have also found authorization for contracting for physician's services, even where the statutory language was not compelling, where there were limitations on improper motives (*Los Angeles County v. Ford*, supra, at pp. 413-414). In addition, arrangements not amounting to employment relationships may be entered into by hospitals and physicians for the provision of medical services (see *Blank v. Palo Alto-Stanford Hospital Center* (1965) 234 Cal.App.2d 377). For purposes of this opinion, we will assume that none of these exceptions apply to the corporation in question here.

## Honorable Pedro Nava — Request #1021592 — Page 3

statute" (Sec. 13401, Corp. C.). Thus, a professional corporation may only render services in a single profession except as authorized under Section 13401.5 of the Corporations Code.

Section 13401.5 of the Corporations Code provides that certain licensed persons "may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation." (Emphasis added.) With respect to medical corporations, subdivision (a) of Section 13401.5 provides that the following licensed persons may be shareholders, officers, directors, or professional employees of the corporation:

- "(a) Medical corporation.
- "(1) Licensed doctors of podiatric medicine.
- "(2) Licensed psychologists.
- "(3) Registered nurses.
- "(4) Licensed optometrists.
- "(5) Licensed marriage and family therapists.
- "(6) Licensed clinical social workers.
- "(7) Licensed physician assistants.
- "(8) Licensed chiropractors.
- "(9) Licensed acupuncturists.
- "(10) Naturopathic doctors."

Section 13401.5 of the Corporations Code thereby liberalizes the language of Section 13401 of the Corporations Code by allowing more than the members of a single profession to participate in the ownership and operation of certain professional corporations.

Pursuant to the doctrine of "expressio unius est exclusio alterius," the enumeration of acts, things, or persons as coming within the operation or exception of a statute will preclude the inclusion by implication in the class covered or excepted of other acts, things, or persons (*Henderson v. Mann Theatres Corp.* (1976) 65 Cal.App.3d 397, 403). Courts may not read into a statute an exception not incorporated therein by the Legislature, unless such an exception must reasonably and necessarily be implied (*Phillippe v. Shapell Industries* (1987) 43 Cal.3d 1247, 1265). As a result, we think that only the licensees listed in paragraphs (1) to (10), inclusive, of subdivision (a) of Section 13401.5 of the Corporations Code may be professional employees of a medical corporation. Because this list does not include physical

therapists, we think that a physical therapist is prohibited from providing physical therapy services as an employee of a medical corporation.<sup>3</sup>

We next turn to whether a physical therapist may be subject to discipline by the Physical Therapy Board of California (hereafter the board) for providing physical therapy services as an employee of a medical corporation. The Physical Therapy Practice Act (Ch. 5.7 (commencing with Sec. 2600), Div. 2) provides for the licensure and regulation of physical therapists by the board. Section 2660 authorizes the board to revoke or impose probationary conditions upon any license, certificate, or approval issued under the Physical Therapy Practice Act for unprofessional conduct, as follows:

"2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- "(a) Advertising in violation of Section 17500.
- "(b) Fraud in the procurement of any license under this chapter.
- "(c) Procuring or aiding or offering to procure or aid in criminal abortion.
- "(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapist assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- "(e) Habitual intemperance.
- "(f) Addiction to the excessive use of any habit-forming drug.
- "(g) Gross negligence in his or her practice as a physical therapist or physical therapist assistant.
- "(h) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the Medical Practice Act.

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<sup>3</sup> Furthermore, in 2003, Section 13401.5 of the Corporations Code was amended to authorize naturopathic doctor corporations to employ various licensed professionals, including licensed physical therapists (Ch. 485, Stats. 2003). The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other aspects are made is indicative of an intent to leave the law as it stands in the aspects not amended (*Cumero v. Public Employment Relations Bd.* (1989) 49 Cal.3d 575, 596).

## Honorable Pedro Nava — Request #1021592 — Page 5

"(i) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

"(j) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

"(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

"(l) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians of the State of California, to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(m) The commission of verbal abuse or sexual harassment."  
(Emphasis added.)

Section 2691 provides that it constitutes unprofessional conduct and a violation of the Physical Therapy Practice Act "for any person licensed under [the act] to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws." Thus, because the Professional Corporation Act does not permit a physical therapist to provide professional services as an employee of a medical corporation, we think a physical therapist who provides those services could be charged with violating, attempting to violate, or assisting in or abetting the violation of the

Professional Corporation Act, and, as a result, could be subject to discipline by the board under Sections 2691 and 2660. However, it is important to note that "the words 'aiding or abetting' in provisions of this kind require scienter or guilty knowledge on the part of one charged with unprofessional conduct" (see 36 Cal.Jur.3d (2010) Healing Arts and Institutions, Sec. 306 (citing *James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1109; *Barrett v. Board of Osteopathic Examiners of California* (1935) 4 Cal.App.2d 135, 139)).

In addition, Section 2630 makes it unlawful for a person to practice physical therapy without holding a valid, unexpired, unrevoked license under the Physical Therapy Practice Act. As discussed above, except as provided by statute, neither a corporation nor any unlicensed person or entity may engage, directly or indirectly, in the practice of certain professions, including the legal and medical professions (*People ex rel. State Bd. of Medical Examiners v. Pacific Health Corp.* (1938) 12 Cal.2d 156, 158). Because a medical corporation is not authorized to employ a physical therapist to provide physical therapy services, we think a medical corporation that does so would be unlawfully engaging in the practice of physical therapy. The medical corporation would thereby violate Section 2630 and the physical therapist providing those services could be subject to discipline for aiding or abetting that violation under subdivision (i) or (j) of Section 2660.<sup>4</sup>

Lastly, subdivision (h) of Section 2660 provides that it is unprofessional conduct and grounds for discipline for a physical therapist to aid or abet a violation of the Medical Practice Act. The Medical Practice Act provides for the licensure and regulation of physicians and surgeons by the Medical Board of California. As discussed above, the rule prohibiting corporations from engaging in the practice of medicine is codified in the Medical Practice Act in Sections 2052 and 2400. Section 2402 and the Professional Corporation Act provide an exception to this rule but do not give a medical corporation the authority to employ physical therapists to provide professional services. As a result, we think a medical corporation that employs a physical therapist to provide those services would fall outside the exception provided by Section 2402 and the Professional Corporation Act and would thereby violate Sections 2052 and 2400. Consequently, the physical therapist may be subject to discipline under subdivision (h) of Section 2660 if he or she is found to have aided or abetted in that violation.<sup>5</sup>

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<sup>4</sup> But see the discussion *supra* regarding required knowledge for "aiding or abetting."


<sup>5</sup> But see the discussion *supra* regarding required knowledge for "aiding or abetting." In addition, the Medical Practice Act specifies that it does not prohibit the practice of other persons licensed under other provisions of law when that person is engaged in his or her authorized and licensed practice (Sec. 2061). Thus, the physical therapist in question here, if licensed under the Physical Therapy Practice Act, would not, himself or herself, be in violation of subdivision (a) of Section 2052.

Honorable Pedro Nava — Request #1021592 — Page 7

In conclusion, it is our opinion that a physical therapist may be subject to discipline by the Physical Therapy Board of California for providing physical therapy services as an employee of a medical corporation.

Very truly yours,

Diane F. Boyer-Vine  
Legislative Counsel

By   
Stephanie L. Shirkey  
Depury Legislative Counsel

SLS:dkr



TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL  
State of California

BILL LOCKYER  
Attorney General

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OPINION	:	No. 04-103
	:	
of	:	July 23, 2004
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
GREGORY L. GONOT	:	
Deputy Attorney General	:	
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THE HONORABLE KEVIN SHELLEY, SECRETARY OF STATE, has requested an opinion on the following question:

May a business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code conduct its activities as a limited liability company?

CONCLUSION

A business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code may conduct its activities as a limited liability company if the services rendered require only a nonprofessional, occupational license.

## ANALYSIS

The Legislature has enacted a comprehensive statutory scheme, the Beverly-Killea Limited Liability Company Act (Corp. Code, §§ 17000-17655; “LLC Act”)<sup>1</sup> to govern the formation and operation of a limited liability company (“LLC”). In *PacLink Communications Internat., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958, 963, the court quoted from 9 Witkin, Summary of California Law (2001 Supp.) section 43A, page 346, in describing the characteristics of an LLC:

“‘A limited liability company is a hybrid business entity formed under the Corporations Code and consisting of at least two ‘members’ [citation] who own membership interests [citation]. The company has a legal existence separate from its members. Its form provides members with limited liability to the same extent enjoyed by corporate shareholders [citation], but permits the members to actively participate in the management and control of the company [citation].’”<sup>2</sup>

While treated like a partnership for income tax purposes, an LLC allows its owners to conduct their business without having personal liability for the obligations of the enterprise. (See § 17101; *Abraham & Sons Enterprises v. Equilon Enterprises* (9th Cir. 2002) 292 F.3d 958, 962; *Forming and Operating Cal. Limited Liability Companies* (Cont. Ed. Bar 1995) § 1.2, pp. 2-3.) In order to form an LLC, an operating agreement must be entered into by the members and articles of organization must be executed and filed with the Secretary of State. (§ 17050.)

We are asked whether a business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code may conduct its activities as an LLC. We conclude that it may do so if the services rendered require only a nonprofessional, occupational license.

Section 17002 generally authorizes an LLC to engage in “any lawful business activity”:

“Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, except the banking business, the

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<sup>1</sup> All references hereafter to the Corporations Code are by section number only.

<sup>2</sup> A limited liability company may now consist of one or more members (§ 17050(a), (b).)

business of issuing policies of insurance and assuming insurance risks, or the trust company business.”

One exception to this general authorization, and the statute critical to our analysis, is section 17375, which states that an LLC has no authority to perform certain “professional services”:

“Nothing in this title shall be construed to permit a domestic or foreign limited liability company to render professional services, as defined in subdivision (a) of Section 13401 and in Section 13401.3, in this state.”

“Section 13401 and . . . Section 13401.3,” referred to in section 17375, are contained in the Moscone-Knox Professional Corporation Act (§§ 13400-13410; “PC Act”). Subdivision (a) of section 13401 provides:

“ ‘Professional services’ means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.”

Section 13401.3 states:

“As used in this part, ‘professional services’ also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).”

Accordingly, an LLC may conduct certain businesses subject “to compliance with any other applicable laws” (§ 17002) but in any event has no authority to perform “professional services” (§ 17375) as defined in two statutes (§§ 13401, 13401.3) found in the PC Act.

How are these statutes to be interpreted and applied with respect to services requiring a license, certification, or registration pursuant to the Business and Professions Code? Over 60 occupational activities require such a license, certification, or registration, including barbers, locksmiths, private detectives, alarm companies, structural pest control operators, electronic and appliance repair shops, and automotive repair dealers. (See, e.g., Bus. & Prof. Code, §§ 6980.10, 7065, 7317, 7520, 7592, 8560, 9840, 9884.)

In analyzing the terms of the LLC Act, including its reference to the PC Act, we may apply well recognized principles of statutory construction. “Our role in construing

a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the law. [Citation]" (*Hunt v. Superior Court* (1999) 21 Cal.4th 984, 1000.) " "In determining intent, we look first to the words of the statute, giving the language its usual, ordinary meaning." " (*Curle v. Superior Court* (2001) 24 Cal.4th 1057, 1063.) " "The words of the statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." " (*Walnut Creek Manor v. Fair Employment & Housing Com.* (1991) 54 Cal.3d 245, 268.)

We must determine the scope of "professional services" as that term is used in sections 13401, 13401.3, and 17375. "[S]tandard dictionaries . . . generally define 'profession' as 'a calling requiring specialized knowledge and often long and intensive academic preparation.' " (*Hollingsworth v. Commercial Union Ins. Co.* (1989) 208 Cal.App.3d 800, 806.) Thus, the adjective "professional" is ordinarily defined as "engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency." (Webster's 3d New Internat. Dict. (2002), p. 1811.) Similarly, a "professional" is "a person who belongs to a learned profession or whose occupation requires a high level of training and proficiency." (Black's Law Dict. (7th ed. 1999), p. 1226.)

In *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, the court concluded that the services performed pursuant to a vehicle salesperson license issued under the Vehicle Code were not "professional services," but rather were "nonprofessional, occupational" services. The court analyzed the differences between the two as follows:

" . . . [C]ourts have drawn a clear distinction between professional licenses, such as veterinarians or psychologists, and nonprofessional occupational licenses. In *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, 1894 . . ., this court held that the preponderance of the evidence standard should be used in administrative proceedings to suspend or revoke a food processor's license. The court noted that a food processor's license could be obtained without meeting any educational or skill requirements. The only specific requirements for obtaining such a license were that the applicant show "character, responsibility, and good faith" ' and a sound financial status. [Citation.] In contrast, in order to obtain a professional license, an applicant must ordinarily satisfy extensive educational and training requirements and pass a rigorous state-administered examination. [Citation.] . . .

"A vehicle salesperson's license is a nonprofessional license. The

license carries no educational, training or testing prerequisites. [Citation.] All of the application criteria concern historical evidence of the applicant's 'character, honesty, integrity, and reputation,' and information regarding prior court judgments and disciplinary actions. [Citation.] . . .” (*Id.* at pp. 318-319.)

Following the reasoning of *Mann*, we find that some services that require a license, certification, or registration pursuant to the Business and Professions Code are “professional services” and others are “nonprofessional services.” To determine whether a particular service is one or the other requires an examination of the educational, training, and testing prerequisites.<sup>3</sup>

Returning to the language of section 17375, we note that an LLC is not permitted “to render professional services.” An LLC would be permitted to perform “nonprofessional services” without violating this statute. As for section 17375’s reference to “subdivision (a) of Section 13401 and . . . Section 13401.3,” here again these two statutes refer to “professional services” that are performed “pursuant to a license, certification, or registration . . . .” Consequently, “nonprofessional services” that require a license, certification, or registration pursuant to the Business and Professions Code would not be covered by the definitions contained in sections 13401 or 13401.3, thus allowing an LLC to perform “nonprofessional services” under the terms of these two statutes.

In so construing the language of sections 13401, 13401.3, and 17375, we harmonize the provisions of the LLC Act and the PC Act. The one refers to the other, and we read the two statutory schemes as a whole. While professional services may not be performed by an LLC, they may be performed by a professional corporation formed under the PC Act. (§§ 13402, 13404.) For example, while attorneys are barred from forming an LLC under the terms of section 17375, they may form a law corporation under the PC Act as authorized by the State Bar Act (see Bus. & Prof. Code, §§ 6160-6172). Such other professionals as doctors, dentists, chiropractors, speech pathologists and audiologists, physical therapists, nurses, psychologists, optometrists, pharmacists, veterinarians, marriage and family counselors, clinical social workers, accountants, architects, and shorthand reporters may form professional corporations under the PC Act. Thus, the authorization contained in the PC Act for the rendering of “professional services” in corporate form

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<sup>3</sup> Applying the *Mann* test to each licensed activity specified in the Business and Professions Code is beyond the scope of this opinion.

confirms our construction of the LLC Act.<sup>4</sup>

We conclude that a business that provides services requiring a license, certification, or registration pursuant to the Business and Professions Code may conduct its activities as an LLC if the services rendered require only a nonprofessional, occupational license.

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<sup>4</sup> We recognize that for some purposes, the term “professional services” has been broadly construed. (See, e.g., *Amex Assurance Co. v. Allstate Ins. Co.* (2003) 112 Cal.App.4th 1246, 1252 [for purposes of a homeowner’s insurance policy, “the word ‘professional’ is no longer limited to the ‘learned professions,’ but has a broader scope that includes skilled services such as plumbing”]; *Hollingsworth v. Commercial Union Ins. Co.*, *supra*, 208 Cal.App.3d at p. 806 [for purposes of a merchant insurance policy, “ ‘professional’ encompasses a broad range of activities beyond those traditionally considered ‘professions,’ such as medicine, law, or engineering”].) Here, we are construing the term “professional services” only for purposes of the LLC Act and its further reference to the PC Act.

13400. This part shall be known and may be cited as the "Moscone-Knox Professional Corporation Act."

13401. As used in this part:

(a) "Professional services" means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act.

(b) "Professional corporation" means a corporation organized under the General Corporation Law or pursuant to subdivision (b) of Section 13406 that is engaged in rendering professional services in a single profession, except as otherwise authorized in Section 13401.5, pursuant to a certificate of registration issued by the governmental agency regulating the profession as herein provided and that in its practice or business designates itself as a professional or other corporation as may be required by statute. However, any professional corporation or foreign professional corporation rendering professional services by persons duly licensed by the Medical Board of California or any examining committee under the jurisdiction of the board, the Osteopathic Medical Board of California, the Dental Board of California, the California State Board of Pharmacy, the Veterinary Medical Board, the California Architects Board, the Court Reporters Board of California, the Board of Behavioral Sciences, the Speech-Language Pathology and Audiology Board, the Board of Registered Nursing, or the State Board of Optometry shall not be required to obtain a certificate of registration in order to render those professional services.

(c) "Foreign professional corporation" means a corporation organized under the laws of a state of the United States other than this state that is engaged in a profession of a type for which there is authorization in the Business and Professions Code for the performance of professional services by a foreign professional corporation.

(d) "Licensed person" means any natural person who is duly licensed under the provisions of the Business and Professions Code, the Chiropractic Act, or the Osteopathic Act to render the same professional services as are or will be rendered by the professional corporation or foreign professional corporation of which he or she is or intends to become, an officer, director, shareholder, or employee.

(e) "Disqualified person" means a licensed person who for any reason becomes legally disqualified (temporarily or permanently) to render the professional services that the particular professional corporation or foreign professional corporation of which he or she is an officer, director, shareholder, or employee is or was rendering.

13401.3. As used in this part, "professional services" also means any type of professional services that may be lawfully rendered only pursuant to a license, certification, or registration authorized by the Yacht and Ship Brokers Act (Article 2 (commencing with Section 700) of Chapter 5 of Division 3 of the Harbors and Navigation Code).

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.

- (1) Licensed doctors of podiatric medicine.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed marriage and family therapists.
- (6) Licensed clinical social workers.
- (7) Licensed physician assistants.
- (8) Licensed chiropractors.
- (9) Licensed acupuncturists.
- (10) Naturopathic doctors.

(b) Podiatric medical corporation.

- (1) Licensed physicians and surgeons.
- (2) Licensed psychologists.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed chiropractors.
- (6) Licensed acupuncturists.
- (7) Naturopathic doctors.

(c) Psychological corporation.

- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.
- (3) Registered nurses.
- (4) Licensed optometrists.
- (5) Licensed marriage and family therapists.
- (6) Licensed clinical social workers.
- (7) Licensed chiropractors.
- (8) Licensed acupuncturists.
- (9) Naturopathic doctors.

(d) Speech-language pathology corporation.

- (1) Licensed audiologists.

(e) Audiology corporation.

- (1) Licensed speech-language pathologists.

(f) Nursing corporation.

- (1) Licensed physicians and surgeons.
- (2) Licensed doctors of podiatric medicine.



- (3) Licensed psychologists.
  - (4) Licensed optometrists.
  - (5) Licensed marriage and family therapists.
  - (6) Licensed clinical social workers.
  - (7) Licensed physician assistants.
  - (8) Licensed chiropractors.
  - (9) Licensed acupuncturists.
  - (10) Naturopathic doctors.
- (g) Marriage and family therapy corporation.
- (1) Licensed physicians and surgeons.
  - (2) Licensed psychologists.
  - (3) Licensed clinical social workers.
  - (4) Registered nurses.
  - (5) Licensed chiropractors.
  - (6) Licensed acupuncturists.
  - (7) Naturopathic doctors.
- (h) Licensed clinical social worker corporation.
- (1) Licensed physicians and surgeons.
  - (2) Licensed psychologists.
  - (3) Licensed marriage and family therapists.
  - (4) Registered nurses.
  - (5) Licensed chiropractors.
  - (6) Licensed acupuncturists.
  - (7) Naturopathic doctors.
- (i) Physician assistants corporation.
- (1) Licensed physicians and surgeons.
  - (2) Registered nurses.
  - (3) Licensed acupuncturists.
  - (4) Naturopathic doctors.
- (j) Optometric corporation.
- (1) Licensed physicians and surgeons.
  - (2) Licensed doctors of podiatric medicine.
  - (3) Licensed psychologists.
  - (4) Registered nurses.
  - (5) Licensed chiropractors.
  - (6) Licensed acupuncturists.
  - (7) Naturopathic doctors.
- (k) Chiropractic corporation.
- (1) Licensed physicians and surgeons.
  - (2) Licensed doctors of podiatric medicine.
  - (3) Licensed psychologists.
  - (4) Registered nurses.
  - (5) Licensed optometrists.
  - (6) Licensed marriage and family therapists.

- (7) Licensed clinical social workers.
- (8) Licensed acupuncturists.
- (9) Naturopathic doctors.
- (l) Acupuncture corporation.
  - (1) Licensed physicians and surgeons.
  - (2) Licensed doctors of podiatric medicine.
  - (3) Licensed psychologists.
  - (4) Registered nurses.
  - (5) Licensed optometrists.
  - (6) Licensed marriage and family therapists.
  - (7) Licensed clinical social workers.
  - (8) Licensed physician assistants.
  - (9) Licensed chiropractors.
  - (10) Naturopathic doctors.
- (m) Naturopathic doctor corporation.
  - (1) Licensed physicians and surgeons.
  - (2) Licensed psychologists.
  - (3) Registered nurses.
  - (4) Licensed physician assistants.
  - (5) Licensed chiropractors.
  - (6) Licensed acupuncturists.
  - (7) Licensed physical therapists.
  - (8) Licensed doctors of podiatric medicine.
  - (9) Licensed marriage, family, and child counselors.
  - (10) Licensed clinical social workers.
  - (11) Licensed optometrists.
- (n) Dental corporation.
  - (1) Licensed physicians and surgeons.
  - (2) Dental assistants.
  - (3) Registered dental assistants.
  - (4) Registered dental assistants in extended functions.
  - (5) Registered dental hygienists.
  - (6) Registered dental hygienists in extended functions.
  - (7) Registered dental hygienists in alternative practice.

13402. (a) This part shall not apply to any corporation now in existence or hereafter organized which may lawfully render professional services other than pursuant to this part, nor shall anything herein contained alter or affect any right or privilege, whether under any existing or future provision of the Business and Professions Code or otherwise, in terms permitting or not prohibiting performance of professional services through the use of any form of corporation permitted by the General Corporation Law.

(b) The conduct of a business in this state by a corporation pursuant to a license or registration issued under any state law, except laws relating to taxation, shall not be considered to be the conduct of a business as a professional corporation if the business

is conducted by, and the license or registration is issued to, a corporation which is not a professional corporation within the meaning of this part, whether or not a professional corporation could conduct the same business, or portions of the same business, as a professional corporation.

13403. The provisions of the General Corporation Law shall apply to professional corporations, except where such provisions are in conflict with or inconsistent with the provisions of this part. A professional corporation which has only one shareholder need have only one director who shall be such shareholder and who shall also serve as the president and treasurer of the corporation. The other officers of the corporation in such situation need not be licensed persons. A professional corporation which has only two shareholders need have only two directors who shall be such shareholders. The two shareholders between them shall fill the offices of president, vice president, secretary and treasurer.

A professional medical corporation may establish in its articles or bylaws the manner in which its directors are selected and removed, their powers, duties, and compensation. Each term of office may not exceed three years. Notwithstanding the foregoing, the articles or bylaws of a professional medical corporation with more than 200 shareholders may provide that directors who are officers of the corporation or who are responsible for the management of all medical services at one or more medical centers may have terms of office, as directors, of up to six years; however, no more than 50 percent of the members of the board, plus one additional member of the board, may have six-year terms of office.

13404. A corporation may be formed under the General Corporation Law or pursuant to subdivision (b) of Section 13406 for the purposes of qualifying as a professional corporation in the manner provided in this part and rendering professional services. The articles of incorporation of a professional corporation shall contain a specific statement that the corporation is a professional corporation within the meaning of this part. Except as provided in subdivision (b) of Section 13401, no professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which such corporation is or proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code or the Chiropractic Act expressly authorizing such professional services to be rendered by a professional corporation.

13404.5. (a) A foreign professional corporation may qualify as a foreign corporation to transact intrastate business in this state in accordance with Chapter 21 (commencing with Section 2100) of Division 1. A foreign professional corporation shall be subject to the provisions of the General Corporation Law applicable to foreign corporations, except where those provisions are in conflict with or inconsistent with the provisions of this part. The statement and designation filed by the foreign professional corporation pursuant to Section 2105 shall contain a specific statement that the corporation is a foreign professional corporation within the meaning of this part.

(b) No foreign professional corporation shall render professional services in this state without a currently effective certificate of registration issued by the governmental agency regulating the profession in which that corporation proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code expressly authorizing those professional services to be rendered by a foreign professional corporation.

(c) If the California board, commission, or other agency that prescribes the rules or regulations governing a particular profession either now or hereafter requires that the shareholders of the professional corporation bear any degree of personal liability for the acts of the corporation, either by personal guarantee or in some other form that the governing agency prescribes, the shareholders of a foreign corporation that has been qualified to do business in this state in the same profession shall, as a condition of doing business in this state, be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, as is prescribed by the governing agency for shareholders of a California professional corporation rendering services in the same profession.

(d) Each application by a foreign professional corporation to qualify to do business in this state shall contain the following statement:

"The shareholders of the undersigned foreign professional corporation shall be subject, with regard to the rendering of professional services by the professional corporation in California, or for California residents, to the same degree of personal liability, if any, in California as is from time to time prescribed by the agency governing the profession in this state for shareholders in a California professional corporation rendering services in the same profession. This application accordingly constitutes a submission to the jurisdiction of the courts of California to the same extent, but only to the same extent, as applies to the shareholders of a California professional corporation in the same profession. The foregoing submission to jurisdiction is a condition of qualification to do business in this state."

13405. (a) Subject to the provisions of Section 13404, a professional corporation may lawfully render professional services in this state, but only through employees who are licensed persons. The corporation may employ persons not so licensed, but such persons shall not render any professional services rendered or to be rendered by that corporation in this state. A professional corporation may render professional services outside of this state, but only through employees who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. Nothing in this section is intended to prohibit the rendition of occasional professional services in another jurisdiction as an incident to the licensee's primary practice, so long as it is permitted by the governing agency that regulates the particular profession in the jurisdiction. Nothing in this section is intended to prohibit the rendition of occasional professional services in this state as an incident to a professional employee's primary practice for a foreign professional corporation qualified to render professional services in this state, so long as it is permitted by the governing agency that regulates the particular profession in this state.

(b) Subject to Section 13404.5, a foreign professional corporation qualified to render professional services in this state may lawfully render professional services in this state, but only through employees who are licensed persons, and shall render professional

services outside of this state only through persons who are licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices. The foreign professional corporation may employ persons in this state who are not licensed in this state, but those persons shall not render any professional services rendered or to be rendered by the corporation in this state.

(c) Nothing in this section or in this part is intended to, or shall, augment, diminish or otherwise alter existing provisions of law, statutes or court rules relating to services by a California attorney in another jurisdiction, or services by an out-of-state attorney in California. These existing provisions, including, but not limited to, admission pro hac vice and the taking of depositions in a jurisdiction other than the one in which the deposing attorney is admitted to practice, shall remain in full force and effect.

13406. (a) Subject to the provisions of subdivision (b), shares of capital stock in a professional corporation may be issued only to a licensed person or to a person who is licensed to render the same professional services in the jurisdiction or jurisdictions in which the person practices, and any shares issued in violation of this restriction shall be void. Unless there is a public offering of securities by a professional corporation or by a foreign professional corporation in this state, its financial statements shall be treated by the Commissioner of Corporations as confidential, except to the extent that such statements shall be subject to subpoena in connection with any judicial or administrative proceeding, and may be admissible in evidence therein. No shareholder of a professional corporation or of a foreign professional corporation qualified to render professional services in this state shall enter into a voting trust, proxy, or any other arrangement vesting another person (other than another person who is a shareholder of the same corporation) with the authority to exercise the voting power of any or all of his or her shares, and any such purported voting trust, proxy or other arrangement shall be void.

(b) A professional law corporation may be incorporated as a nonprofit public benefit corporation under the Nonprofit Public Benefit Corporation Law under either of the following circumstances:

(1) The corporation is a qualified legal services project or a qualified support center within the meaning of subdivisions (a) and (b) of Section 6213 of the Business and Professions Code.

(2) The professional law corporation otherwise meets all of the requirements and complies with all of the provisions of the Nonprofit Public Benefit Corporation Law, as well as all of the following requirements:

(A) All of the members of the corporation, if it is a membership organization as described in the Nonprofit Corporation Law, are persons licensed to practice law in California.

(B) All of the members of the professional law corporation's board of directors are persons licensed to practice law in California.

(C) Seventy percent of the clients to whom the corporation provides legal services are lower income persons as defined in Section 50079.5 of the Health and Safety Code, and to other persons who would not otherwise have access to legal services.

(D) The corporation shall not enter into contingency fee contracts with clients.

(c) A professional law corporation incorporated as a nonprofit public benefit corporation that is a recipient in good standing as defined in subdivision (c) of Section 6213 of the Business and Professions Code shall be deemed to have satisfied all of the filing requirements of a professional law corporation under Sections 6161.1, 6162, and 6163 of the Business and Professions Code.

13407. Shares in a professional corporation or a foreign professional corporation qualified to render professional services in this state may be transferred only to a licensed person, to a shareholder of the same corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a professional corporation, and any transfer in violation of this restriction shall be void, except as provided herein.

A professional corporation may purchase its own shares without regard to any restrictions provided by law upon the repurchase of shares, if at least one share remains issued and outstanding.

If a professional corporation or a foreign professional corporation qualified to render professional services in this state shall fail to acquire all of the shares of a shareholder who is disqualified from rendering professional services in this state or of a deceased shareholder who was, on his or her date of death, licensed to render professional services in this state, or if such a disqualified shareholder or the representative of such a deceased shareholder shall fail to transfer said shares to the corporation, to another shareholder of the corporation, to a person licensed to practice the same profession in the jurisdiction or jurisdictions in which the person practices, or to a licensed person, within 90 days following the date of disqualification, or within six months following the date of death of the shareholder, as the case may be, then the certificate of registration of the corporation may be suspended or revoked by the governmental agency regulating the profession in which the corporation is engaged. In the event of such a suspension or revocation, the corporation shall cease to render professional services in this state.

Notwithstanding any provision in this part, upon the death or incapacity of a dentist, any individual named in subdivision (a) of Section 1625.3 of the Business and Professions Code may employ licensed dentists and dental assistants and charge for their professional services for a period not to exceed 12 months from the date of death or incapacity of the dentist. The employment of licensed dentists and dental assistants shall not be deemed the practice of dentistry within the meaning of Section 1625 of the Business and Professions Code, provided that all of the requirements of Section 1625.4 of the Business and Professions Code are met. If an individual listed in Section 1625.3 of the Business and Professions Code is employing licensed persons and dental assistants, then the shares of a deceased or incapacitated dentist shall be transferred as provided in this section no later than 12 months from the date of death or incapacity of the dentist.

13408. The following shall be grounds for the suspension or revocation of the certificate of registration of a professional corporation or a foreign professional corporation qualified to render professional services in this state: (a) if all shareholders who are licensed persons

of such corporation shall at any one time become disqualified persons, or (b) if the sole shareholder shall become a disqualified person, or (c) if such corporation shall knowingly employ or retain in its employment a disqualified person, or (d) if such corporation shall violate any applicable rule or regulation adopted by the governmental agency regulating the profession in which such corporation is engaged, or (e) if such corporation shall violate any statute applicable to a professional corporation or to a foreign professional corporation, or (f) any ground for such suspension or revocation specified in the Business and Professions Code relating to the profession in which such corporation is engaged. In the event of such suspension or revocation of its certificate of registration such corporation shall cease forthwith to render professional services in this state.

13408.5. No professional corporation may be formed so as to cause any violation of law, or any applicable rules and regulations, relating to fee splitting, kickbacks, or other similar practices by physicians and surgeons or psychologists, including, but not limited to, Section 650 or subdivision (e) of Section 2960 of the Business and Professions Code. A violation of any such provisions shall be grounds for the suspension or revocation of the certificate of registration of the professional corporation. The Commissioner of Corporations or the Director of the Department of Managed Health Care may refer any suspected violation of such provisions to the governmental agency regulating the profession in which the corporation is, or proposes to be engaged.

13409. (a) A professional corporation may adopt any name permitted by a law expressly applicable to the profession in which such corporation is engaged or by a rule or regulation of the governmental agency regulating such profession. The provisions of subdivision (b) of Section 201 shall not apply to the name of a professional corporation if such name shall contain and be restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership or other organization or whose name or names appeared in the name of such predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to file articles of incorporation which set forth such a name; provided, however, that such name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in this state which is authorized to transact business in this state, or a name which is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the professional corporation complies with the requirements of this section and of the law governing the profession in which such professional corporation is engaged. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

(b) A foreign professional corporation qualified to render professional services in this state may transact intrastate business in this state by any name permitted by a law expressly applicable to the profession in which the corporation is engaged, or by a rule or regulation of the governmental agency regulating the rendering of professional services in this state by the corporation. The provisions of subdivision (b) of Section 201 shall not apply to the name of a foreign professional corporation if the name contains and is

restricted to the name or the last name of one or more of the present, prospective, or former shareholders or of persons who were associated with a predecessor person, partnership, or other organization, or whose name or names appeared in the name of the predecessor organization, and the Secretary of State shall have no authority by reason of subdivision (b) of Section 201 to refuse to issue a certificate of qualification to a foreign professional corporation that sets forth that name in its statement and designation; provided, however, that such a name shall not be substantially the same as the name of a domestic corporation, the name of a foreign corporation qualified to render professional services in the state, or a name that is under reservation for another corporation. The Secretary of State may require proof by affidavit or otherwise establishing that the name of the foreign professional corporation qualified to render professional services in this state complies with the requirements of this section and of the law governing the profession in which the foreign professional corporation qualified to render professional services in this state proposes to engage in this state. The statements of fact in such affidavits may be accepted by the Secretary of State as sufficient proof of the facts.

13410. (a) A professional corporation or a foreign professional corporation qualified to render professional services in this state shall be subject to the applicable rules and regulations adopted by, and all the disciplinary provisions of the Business and Professions Code expressly governing the practice of the profession in this state, and to the powers of, the governmental agency regulating the profession in which such corporation is engaged. Nothing in this part shall affect or impair the disciplinary powers of any such governmental agency over licensed persons or any law, rule or regulation pertaining to the standards for professional conduct of licensed persons or to the professional relationship between any licensed person furnishing professional services and the person receiving such services.

(b) With respect to any foreign professional corporation qualified to render professional services in this state, each such governmental agency shall adopt rules, regulations, and orders as appropriate to restrict or prohibit any disqualified person from doing any of the following:

- (1) Being a shareholder, director, officer, or employee of the corporation.
- (2) Rendering services in any profession in which he or she is a disqualified person.
- (3) Participating in the management of the corporation.
- (4) Sharing in the income of the corporation.