

AGENDA ITEM 2(A)

Amend Business & Professions Code Section 146

146. (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when either of the following applies:

(1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor.

(2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.

(b) Subdivision (a) does not apply to a violation of the code sections listed in subdivision (c) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.

(c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:

(1) Sections 2052 and 2054.

(2) Section 2630.

(3) Section 2903.

(4) Section 3660.

(5) Sections 3760 and 3761.

(6) Section 4080.

(7) Section 4825.

(8) Section 4935.

(9) Section 4980.

(10) Section 4996.

(11) Section 5536.

(12) Section 6704.

(13) Section 6980.10.

(14) Section 7317.

(15) Section 7502 or 7592.

(16) Section 7520.

(17) Section 7617 or 7641.

(18) Subdivision (a) of Section 7872.

(19) Section 8016.

(20) Section 8505.

(21) Section 8725.

(22) Section 9681.

(23) Section 9840.

(24) Subdivision (c) of Section 9891.24.

(25) Section 19049.

(26) Section 2570.3.

(d) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

AGENDA ITEM 2(B)

Amend Business & Professions Code Section 149

149. (a) If, upon investigation, an agency designated in subdivision (e) has probable cause to believe that a person is advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with the agency to offer or perform those services, the agency may issue a citation under Section 148 containing an order of correction that requires the violator to do both of the following:

- (1) Cease the unlawful advertising. .
- (2) Notify the telephone company furnishing services to the violator to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(b) This action is stayed if the person to whom a citation is issued under subdivision (a) notifies the agency in writing that he or she intends to contest the citation. The agency shall afford an opportunity for a hearing, as specified in Section 125.9.

(c) If the person to whom a citation and order of correction is issued under subdivision (a) fails to comply with the order of correction after that order is final, the agency shall inform the Public Utilities Commission of the violation and the Public Utilities Commission shall require the telephone corporation furnishing services to that person to disconnect the telephone service furnished to any telephone number contained in the unlawful advertising.

(d) The good faith compliance by a telephone corporation with an order of the Public Utilities Commission to terminate service issued pursuant to this section shall constitute a complete defense to any civil or criminal action brought against the telephone corporation arising from the termination of service.

(e) Subdivision (a) shall apply to the following boards, bureaus, committees, commissions, or programs:

- (1) The Bureau of Barbering and Cosmetology.
- (2) The Cemetery and Funeral Bureau.
- (3) The Veterinary Medical Board.
- (4) The Landscape Architects Technical Committee.
- (5) The California Board of Podiatric Medicine.
- (6) The Respiratory Care Board of California.
- (7) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.
- (8) The Bureau of Security and Investigative Services.
- (9) The Bureau of Automotive Repair.
- (10) The California Architects Board.
- (11) The Speech-Language Pathology and Audiology Board.
- (12) The Board for Professional Engineers and Land Surveyors.
- (13) The Board of Behavioral Sciences.
- (14) The Structural Pest Control Board within the Department of Pesticide Regulation.
- (15) The Acupuncture Board.
- (16) The Board of Psychology.
- (17) The California Board of Accountancy.
- (18) The Naturopathic Medicine Committee.
- (19) The Physical Therapy Board of California.
- (20) The Bureau for Private Postsecondary Education.
- (21) The California Board of Occupational Therapy.

AGENDA ITEM 2(C)

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 evaluation, 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 evaluation 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, in groups, ~~or through social groups~~ or via telehealth technologies.

(2) Occupational therapy includes, but is not limited to, performing as a 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.

AGENDA ITEM 2(D)

Amend Business & Professions Code Section 2570.3(k)

~~(k) The amendments to subdivisions (d), (e), (f), and (g) relating to advanced practices, that are made by the act adding this subdivision, shall become operative no later than January 1, 2004, or on the date the board adopts regulations pursuant to subdivision (h), whichever first occurs.~~

The board may approve a provider of post-professional education courses, that on or after January 1, 2015, submits an application to the Board and pays the fee set forth in section 2570.16. Each approved provider shall expire on June 30, 2014, and biennially thereafter.

(l) On or after January 1, 2015, the board may approve a post-professional education course, when a provider approved under section (k) submits a post-professional education course application to the Board and pays the fee set forth in section 2570.16.

(original language was approved as "on or after January 1, 2012.")

AGENDA ITEM 2(E)

Amend Business and Professions Code Section 2570.16

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

(a) An application fee not to exceed fifty dollars (\$50).

(b) A late renewal fee as provided for in Section 2570.10.

(c) A limited permit fee.

(d) A fee to collect fingerprints for criminal history record checks.

(e) A fee to query the National Practitioner Data Bank and the Healthcare Integrity Protection Data Bank.

(f) An initial application fee for providers of post-professional education courses shall be a non-refundable fee of three hundred dollars (\$300).

(g) A biennial renewal fee for an approved post-professional education course provider shall be no less than three hundred dollars (\$300), but no more than five hundred-fifty dollars (\$550) per renewal cycle.

(h) A one-time, non-refundable fee for review of each post-professional educational course shall be no less than ninety dollars (\$90) and no more than one hundred-fifty (\$150) dollars per course.

AGENDA ITEM 2(F)

Amend Business & Professions Code Section 2570.18

(a) On and after January 1, 2003, a person shall not represent to the public by title, education, or background, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.

(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.," "O.T.R.," "O.T.R./L.," "Occupational Therapist," or "Occupational Therapist Registered," or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.

(c) A licensed occupational therapist or licensed occupational therapy assistant who has earned a doctoral degree, granted by an institution accredited by the Western Association of Schools and Colleges, or a program accredited by the Accreditation Council on Occupational Therapy Education, or by an accrediting agency recognized by the National Commission on Accrediting or the United States Department of Education that the board determines is equivalent to the Western Association of Schools and Colleges, may do the following:

(1) In a written communication, use the initials conferred with that earned degree, as applicable, following the licensee's name.

(2) In a written communication, use the title "Doctor" or the abbreviation "Dr." preceding the licensee's name, and the licensee's name shall be immediately followed by an unabbreviated specification of the applicable earned doctoral degree held by the licensee, or the unabbreviated term occupational therapist or occupational therapy assistant, as applicable.

(3) In a spoken communication while engaged in the practice of occupational therapy, use the title "doctor" preceding the person's name, and the speaker specifies that he or she is an occupational therapist or occupational therapy assistant.

(d) A licensed occupational therapist or occupational therapy assistant who has been granted an honorary degree by an educational institution accredited by the Western Association of Schools and Colleges, the Accreditation Council on Occupational Therapy Education, or by an accrediting agency recognized by the National Commission on Accrediting or the United States Department of Education that the board determines is equivalent to the Western Association of Schools and College, may do the following:

(1) In a written communication, use the initials granted with that honorary degree, as applicable, followed by the designation "(Hon.)" or "(Honorary)," following the licensee's name.

(2) In a written communication, use the title "Doctor" or the abbreviation "Dr." preceding the licensee's name, and the licensee's name shall be immediately followed by an unabbreviated specification of the applicable honorary doctoral degree held by the licensee with the designation "(Hon.)" or "(Honorary)," and the unabbreviated term occupational therapist or occupational therapy assistant, as applicable.

(3) In a spoken communication when engaged in the practice of occupational therapy, use the title "doctor" preceding the person's name, and the speaker specifies that he or she has been granted an honorary degree and specifies that he or she is an occupational therapist or occupational therapy assistant.

(e) (e) Unless certified to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations "O.T.A.," "C.O.T.A.," "C.O.T.A./C." or "Occupational Therapy Assistant," or "Certified Occupational Therapy Assistant," or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.

(d)(f) The unauthorized practice or representation as an occupational therapist or as an occupational therapy assistant constitutes an unfair business practice under Section 17200 and false and misleading advertising under Section 17500.

AGENDA ITEM 2(H)

Amend Business & Professions Code Section 2570.27

2570.27. (a) The board may discipline a licensee by any or a combination of the following methods:

(1) Placing the license on probation with terms and conditions.

(a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

(2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.

(3) Revoking the license.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the board, in its discretion, deems proper.

(b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

AGENDA ITEM 2(I)

Add new Business and Professions Code Section 2570.33

(a) Any employer of an occupational therapy practitioner shall report to the California Board of Occupational Therapy the suspension or termination for cause of any practitioner in their employ. The reporting required herein shall not act as a waiver of confidentiality of medical records. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800, and shall not be subject to discovery in civil cases.

(b) For purposes of the section, "suspension or termination for cause" is defined to mean suspension or termination from employment for any of the following reasons:

(1) Use of controlled substances or alcohol to such an extent that it impairs the ability to safely practice occupational therapy.

(2) Unlawful sale of controlled substances or other prescription items.

(3) Patient neglect, physical harm to a patient, or sexual contact with a patient.

(4) Falsification of medical, treatment, client consultation or billing records.

(5) Incompetence or negligence.

(6) Theft from patients, other employees, or the employer.

(c) The first failure of an employer to make a report required by this section, shall result in a letter educating the employer of their reporting responsibilities. The second failure to make a report by this section shall be punishable by an administrative fine not to exceed one thousand dollars (\$1,000). The third and any subsequent violations shall be punishable by an administrative fine not to exceed five thousand dollars (\$5,000) per violation.

Add new Business and Professions Code Section 2570.35

(a) In addition to the reporting required under Section 2570.33, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 2570.33. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed five thousand dollars (\$5,000) per violation.

AGENDA ITEM 2(J)

Add new Business and Professions Code Section

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care. This section shall not grant immunity from civil damages when the person is grossly negligent.

An amendment to Government Code Section 8659(a)

(a) Any physician or surgeon (whether licensed in this state or any other state), hospital, pharmacist, respiratory care practitioner, nurse, occupational therapist, occupational therapy assistant, or dentist who renders services during any state of war emergency, a state of emergency, disaster, or a local emergency at the express or implied request of any responsible state or local official or agency shall have no liability for an injury sustained by any person by reason of those services, regardless of how or under what circumstances or by what cause such injuries are sustained; provided, however, that the immunity herein granted shall not apply in the event of a willful act or omission, or when the person is grossly negligent.

Similar language

BPC §2727.5. Liability for emergency care

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of that person's employment shall not be liable for any civil damages as the result of acts or omissions by that person in rendering the emergency care. This section shall not grant immunity from civil damages when the person is grossly negligent.

BPC §3706. Immunity from liability for rendering emergency care; Exception

A person licensed under this chapter who in good faith renders emergency care at the scene of an emergency which occurs outside both the place and the course of employment shall not be liable for any civil damages as the result of acts or omissions by the person in rendering the emergency care. This section does not grant immunity from civil damages when the person is grossly negligent.

AGENDA ITEM 2(K)

Add new Business and Professions Code Section

(a) Each member of the board, or a Any licensed occupational therapist appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility providing occupational therapy treatment or services and the occupational therapy staff thereof, with respect to the occupational therapy treatment, services, or facilities provided therein, and may inspect occupational therapy patient records with respect to the care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section shall not be delegated by a member of the board to any person other than an occupational therapist and shall be subject to the disclosure restrictions.

(b) The willful, unauthorized violation of professional confidence or unauthorized disclosure authorized by this section constitutes unprofessional conduct.

AGENDA ITEM 2(M)

Add new Business and Professions Code Section 2572, Standards of Practice for Telehealth in Occupational Therapy

(a) The provision of telehealth is intended to provide equitable access or increased access to occupational therapy services, to promote independence, and to increase the quality and standards of care when a patient or client has a disability, illness, injury or has a need for consultative, preventative, diagnostic, wellness, or therapeutic services.

(b) The purpose of this section is to establish standards for the practice of telehealth by means of an interactive telecommunication system by an occupational therapist or occupational therapy assistant licensed under this chapter. The standard of care provided to patients is the same whether the patient is seen in-person, via telehealth or telerehabilitation, or other methods of electronically enabled occupational therapy, health care or education. Occupational therapists or occupational therapy assistants need not reside in California, as long as they have a valid, current and unrestricted California license.

(c) Occupational therapists must obtain verbal and written informed consent from the patient prior to delivering health care via telehealth, and also requires that this signed written consent statement becomes part of the patient's medical record.

(d) An occupational therapist or occupational therapy assistant licensed under this chapter conducting telehealth by means of an interactive telecommunication system must do all of the following:

(1) Provide services and/or treatment consistent with the practice of occupational therapy as defined in section 2570.2(k) of the Code.

(2) Interact with the patient maintaining the same ethical standards of practice required pursuant to Section 4170, California Code of Regulations;

(3) Comply with the supervision requirements for any licensed occupational therapy assistant providing services under this section;

(4) Provide and ensure appropriate client confidentiality and HIPAA compliance, establish secure connections, activate firewalls, and encrypt confidential information.

(e) For purposes of this section:

(1) "Telehealth" means the provision of health care, health information, or health education, using telecommunications technology, other technologies using interactive audio, video, or data communications when providing or using telerehabilitation, or via other specially adapted equipment.

(2) "Telerehabilitation" means the provision, at a distance, of telehealth-based rehabilitation services using various technologies including real-time videoconferencing, personal computer-based camera usage, videophones, home-applied technology for recording and submission of images, and includes the use of other technologies, including virtual reality videogame-based rehabilitation systems or other virtual reality systems with haptic interfaces.

AGENDA ITEM 2(N)

Add new Business and Professions Code Section 2570.5, Workforce Study

(a) The board shall collect and analyze workforce data from its licensees for future workforce planning. The board may collect the data at the time of license renewal or from a scientifically selected random sample of its licensees. The board shall produce reports on the workforce data it collects, at a minimum, on a biennial basis. The board shall maintain the confidentiality of the information it receives from licensees under this section and shall only release information in an aggregate form that cannot be used to identify an individual. The workforce data collected by the board shall include, at a minimum, employment information such as hours of work, number of positions held, time spent in direct patient care, clinical practice area, type of employer, and work location. The data shall also include future work intentions, reasons for leaving or reentering occupational therapy, job satisfaction ratings, and demographic data.

(b) Aggregate information collected pursuant to this section shall be placed on the board's Internet Web site.

(c) The board is authorized to expend the sum of fifty-five thousand dollars (\$55,000) from the Occupational Therapy Fund for the purpose of implementing this section.

(d) This section shall be implemented by the board on or before January 1, 2014.

(original language was approved as "on or before July 1, 2009.")