

AGENDA ITEM 7

REVIEW AND APPROVAL OF THE MARCH 6, 2015, BOARD MEETING MINUTES.

The meeting minutes are attached for review.



CALIFORNIA BOARD OF OCCUPATIONAL THERAPY MEETING MINUTES

Friday, March 6, 2015

Board Member(s) Present

Richard Bookwalter

Linda Florey

Nancy Michel

Denise Miller

Sharon Pavlovich

Board Staff Present

Heather Martin, Executive Officer

Jeff Hanson, Enforcement Coordinator

Jody Quesada, Enforcement Analyst

Norine Marks, Supervising Attorney

Eliana Butu, Attorney

9:00 am - Board Meeting

1. Call to order, roll call, establishment of a quorum.

The meeting was called to order at 9:02 am; all Board members were in attendance with the exception of Jeff Ferro, and a quorum was established.

2. President's remarks.

President Denise Miller thanked Board staff and welcomed the Board's newly assigned Attorney, Eliana Butu.

Ms. Miller stated that she would be attending the Occupational Therapy Association of California's Spring Symposium where she will make two presentations and she will be attending the American Occupational Therapy Foundation conference in Nashville where she will be accepting the "Legacy of Leadership" award.

Ms. Miller stated that she would be focusing on increasing the participation on the Board's committees.

3. Board member updates/activities.

Sharon Pavlovich reported that she has been busy teaching and that she would be returning to the Harvard Macy Institute in May.

Richard Bookwalter reported that he planned on attending the Rehabilitation Engineering Society of North America conference in June and that he has also taken on a consulting position for developmentally disabled adults.

Linda Florey reported that she has been involved with the California Foundation activities and planned to attend the Spring Symposium. Ms. Florey announced that Ann Neville-Jan recently passed away.

Nancy Michel reported that she was chairing the fundraising campaign at the YMCA for at-risk families.

President Denise Miller welcomed member of the public Ernie Escovedo, an occupational therapist.

4. Review and approval of the November 13, 2014, Board meeting minutes.

Nancy Michel recommended that Board staff remove the “s” from the word “scenarios” on page three, line two as well as another grammar error on page 6, paragraph three which led to Heather Martins’ recommendation that would encompass said grammar correction by rearranging the wording to read as follows: “...which states that an occupational therapist approved to use Physical Agent Modalities (PAMs) can use topical medications etc...”

Legal Counsel, Norine Marks stated that with regard to page three, agenda item 7, Section (2) her notes reflected that the word “employer” should have been removed at the direction of the Board. The Board members agreed.

- ❖ Linda Florey moved to approve the November 13, 2014, Board meeting minutes as amended.
- ❖ Nancy Michel seconded the motion.

Roll Call Vote

Nancy Michel -	Aye
Denise Miller -	Aye
Sharon Pavlovich -	Aye
Richard Bookwalter -	Aye
Linda Florey -	Aye

5. Public Comment session for items not on the agenda.

No Public Comment

6. Update and take action, if necessary, on pending Rulemaking files, California Code of Regulations, Title 16, Division 39:

- Section 4151, Hand Therapy and Section 4152, Physical Agent Modalities

Executive Officer Heather Martin explained that due to a staffing resource issue, Board staff was unable to get the file submitted timely. Ms. Martin stated that this language would be noticed again in time for the Board to consider it at their June meeting.

Ms. Miller expressed concern and stated that this language was very important to the profession and that the Board and Board staff must be responsive and mindful of our obligation to the profession. Ms. Martin assured the Board members that the rulemaking package would be a high priority.

- Section 4161, Continuing Competency

Ms. Martin stated that an extension was obtained from the Director of the Department of Consumer Affairs (DCA) and there is a future effective date pending DCAs approval.

- Section 4170, Ethical Standards of Practice.

Ms. Martin stated that this package also received an extension from the Director and will be further discussed in agenda item 7.

Ms. Martin asked Board members to prioritize the pending amendments not yet started so as to give Board staff direction.

The Board members decided the order of importance should be:

- Standards of Practice for Telehealth
- Notification to Consumers
- Continuing Competency

Mr. Bookwalter asked Ms. Martin to bring back information on how other Boards have drafted language and tackled issues regarding Notification to Consumers requirements.

7. Discussion and consideration of adopting proposed regulatory language to amend Title 16, CCR Section 4170, Ethical Standards of Practice.

- ❖ Richard Bookwalter moved to adopt the second modified text as presented.
- ❖ Nancy Michel seconded the motion.

No Public Comment

Roll Call Vote

Nancy Michel - Aye
Denise Miller - Aye
Sharon Pavlovich - Aye
Richard Bookwalter - Aye
Linda Florey - Aye

- ❖ Richard Bookwalter moved to delegate authority to the Executive Officer to make technical, non-substantive changes.
- ❖ Sharon Pavlovich seconded the motion.

Roll Call Vote

Nancy Michel - Aye
Denise Miller - Aye
Sharon Pavlovich - Aye
Richard Bookwalter - Aye
Linda Florey - Aye

8. Discussion and consideration of the Ad Hoc Committee's recommendation regarding the request from California Fieldwork Council to increase the number of PDUs earned for supervising students completing their Level II Fieldwork.

Mr. Bookwalter reviewed the request that the Board award one PDU per each forty hour week of supervision with a maximum of twelve PDUs per biennial renewal period which would conform to the current National Board for Certification in Occupational Therapy's (NBCOT) PDU levels, and to allow for proportional sharing amongst supervisors. The Ad Hoc committee also raised the issue of awarding PDUs for supervising a student's Level I fieldwork.

Mr. Bookwalter reported that the Ad Hoc committee recommended the Board adopt the NBCOT standards. He stated that the change would positively affect the profession by offering higher quality fieldwork slots that would ultimately impact the quality of care, introducing new ideas from academia in to the practice setting, challenging therapists to verify their knowledge, and incentivize a therapist to supervise a student.

- ❖ President Miller moved to establish a committee to work on this issue.

Discussion ensued regarding earning credit based on supervised hours vs. supervised weeks, the issue of a student having multiple supervisors, and the development and use of a fieldwork log/form.

Ms. Miller withdrew her recommendation to establish a new committee and asked the current Ad-Hoc committee to discuss and bring to the June Board meeting: recommendations on fractional supervision, fieldwork log/form and how to assist Board staff enforcement and regulation.

Public Comment

Ernie Escovedo, OT, commented on the Attestation form used by the practitioner whom is actively gaining physical agent modalities (PAMs) credit as an example.

Muhammad Ali from the Centers for Public Interest Law (CPIL) joined the meeting.

9. Discussion and consideration of the possibility of AOTA/ACOTE amending the academic requirements of an educational program required for licensure.

Ms. Miller stated that AOTA met but she had not been advised of any update. She expects an update will soon be available and will present it at the June Board meeting.

10. Update on OT educational programs providing superficial/mechanical modalities and deep thermal/electrotherapeutic modalities content in OT curriculum.

Ms. Martin reviewed the proposed draft survey of modalities education being provided in the OT curriculum presented by Dr. Donna Breger-Stanton.

President Miller asked who would monitor the data extracted from this survey. Ms. Martin stated that Dr. Breger-Stanton would monitor the data and would share her findings with the Board.

Richard Bookwalter reported that in speaking with Dr. Breger-Stanton her expectation was that the survey would inform and allow the Board to make a recommendation to alter the advanced practice requirements for PAMs in the future.

Public Comment

Ernie Escovedo, OT, concurred that there is additional work to be done. He commented that he works with physical agent modalities (PAMs) and is not comfortable with post-professional education being eliminated and supports continuing with the advanced practice approval process from a consumer safety standpoint.

11. Discussion and consideration of the request from the National Board for Certification in Occupational Therapy to serve as the 'authorized agent' to report disciplinary actions to the (federal) National Practitioner Data Bank (NPDB) on behalf of the Board.

Ms. Martin reported that by NBCOT serving as the authorized agent for the Board, they would report the Board's disciplinary action to the NPDB on behalf of the Board and would also keep the information for themselves in order to build a repository of national disciplinary actions to share with state licensing Boards.

Discussion ensued about the pros and cons of allowing NBCOT to be the Board's authorized agent.

The Board members asked Ms. Martin to collect more information including a sample/draft contract to be reviewed by the Board's attorney and bring this information to the June Board meeting.

12. Discussion and consideration of amending Board's mail-ballot policy to discuss decisions in an upcoming closed session.

Supervising Attorney Norine Marks reviewed the Board's existing mail ballot policy for disciplinary decisions that requires a majority vote for a case to be scheduled for further discussion in a closed session meeting. Ms. Marks suggested that the Board might want to consider lowering the threshold of votes needed to hold an item for discussion. For example, establish two votes received for anything other than "adopt" may be more appropriate to bring the matter back for discussion at the next meeting.

- ❖ Nancy Michel moved for Board staff to work with legal counsel to draft new language that would reflect that two votes of anything other than adopt would be brought back to the Board members in closed session.
- ❖ Linda Florey seconded the motion.

No Public Comment

Roll Call Vote

Nancy Michel -	Aye
Denise Miller -	Aye
Sharon Pavlovich -	Aye
Richard Bookwalter -	Aye
Linda Florey -	Aye

13. Enforcement data and reports for the quarter ending December 31, 2014.

Jeff Hanson reviewed all attached reports.

Board members thanked Board staff for their work. President Miller mentioned that she had recently been audited for continuing education and was happy to report that the process worked.

14. Executive Officer's Report.

a) Operational Report

Ms. Martin stated there are currently 3 vacancies at the Board staff level. Ms. Martin noted that the Board usually receives about 900 applications per year, but received 1310 applications last year.

b) Budget Update

Ms. Martin reviewed the provided handouts. She stated that BreEZe development costs are rising and DCA was securing additional funding. Ms. Martin pointed out that, unlike some other board's funds, the Board's fund condition can support the increased costs.

c) BreEZe Update

The release 3 boards/bureaus have been removed from the BreEZe implementation.

Ms. Martin offered that the BreEZe functionality and the ease in which the end-user can navigate the system will be wonderful amazing. Ms. Martin ended with the fact that licensee renewal fees will not increase in price due to implementation of BreEZe.

d) Bagley-Keene Meetings Act Update

Ms. Martin provided a memo from the DCA Legal Office outlining three important updates along with the 2015 version of the Open Meetings Act.

e) Strategic Planning Update

Ms. Martin provided the draft Strategic Planning calendar. Ms. Martin volunteered to get the survey in advance to review the nature of the interview and will include the previous strategic plan.

f) Other Informational Items

Ms. Martin reviewed handouts containing the Board's Performance Measures. President Miller inquired about performance measure 4 and the total time it takes for the Board to completely adjudicate a case. Ms. Martin reported that the formal discipline process involves several agencies, including the Division of Investigation, the Office of the Attorney General, and the Office of Administrative Hearings, all of whose processing time frames are out of the Board's control when it comes to how long each entity takes to complete their work and return the matter to the Board.

15. Election of Officer(s).

- ❖ Linda Florey moved to nominate Richard Bookwalter for Vice President.
- ❖ Nancy Michel seconded the motion.

President Miller asked for any further nominations. There were no additional nominations.

No Public Comment

Roll Call Vote

Nancy Michel -	Aye
Denise Miller -	Aye
Sharon Pavlovich -	Aye
Richard Bookwalter -	Aye
Linda Florey -	Aye

16. Discussion regarding proposed agenda items for a future meeting.

Ms. Martin reminded members of several items to be addressed at a future meeting, including:

- Consideration of proposed language to implement Business and Professions Code Section 2570.32 as it pertains to the Board's possible refusal to hear a petition for reinstatement for petitioners who are currently under court-ordered probation or parole or subject to registration pursuant to Penal Code 290.
- Discussion and consideration of records retention requirement if a business is closed or sold or if the practitioner is no longer in private practice.
- Discussion and consideration of the process and procedures of Board staff when issuing administrative citations.

Ms. Martin said she will provide Members an enforcement overview to see if that addresses any questions about when Board staff issues citations.

- Other future agenda items.

Public Comment

Ernie Escovedo, OT, asked that the Board to include clarification of the Advanced Practice course approvals, and instructor approvals. He stated that there had been changes within the application process and the instructors and providers are relying on timely approvals.

Ms. Martin said that she would contact Mr. Escovedo to discuss his concerns.

17. The Board will convene in Closed Session pursuant to Government Code Section 11126(c)(3) to deliberate on disciplinary matters.

There were no closed session items to be discussed.

18. Adjournment.

The meeting adjourned at 1:03 p.m.

DRAFT

AGENDA ITEM 8

CONSIDERATION AND POSSIBLE ACTION OF ADOPTING PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4151, HAND THERAPY AND SECTION 4152, PHYSICAL AGENT MODALITIES.

The following are attached for review:

- Notice
- Proposed text
- Initial statement of reasons

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on May 19, 2015.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the CBOT. The request must be received in the Board office not later than 5:00 pm on May 4, 2015.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.2 and 2570.3, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

The Board is the regulatory entity that regulates the practice of occupational therapy in the State of California. Existing law, BPC section 2570.25, mandates protection of the public shall be the highest priority of the Board in exercising its licensing, regulatory, and disciplinary functions.

Policy Statement Overview

Existing law, BPC section 2570.3(d) establishes that an occupational therapist may provide advanced practice services (e.g. hand therapy, physical agent modalities, or swallowing assessment, evaluation, and intervention) if the therapist has the knowledge, skill, and ability to do so and has demonstrated to the satisfaction of the Board that he or she has met post-professional educational and supervised training.

This proposed action will amend 16 CCR Section 4151, which establishes and defines the requirements for occupational therapists to qualify for Board's approval to provide advanced practice services in the area of hand therapy. The Board proposed amendment will establish that occupational therapists that provide proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements of this Section. This proposed action also makes other technical amendments to clarify that an application must be filed pursuant to existing regulations in Section 4155 and makes other minor formatting and renumbering edits to affect these amendments.

This proposed action will amend Section 4152, which establishes and defines the requirements for occupational therapists to qualify for Board approval to use physical agent modalities in their practice. The proposed amendment will establish that occupational therapists that provide proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements of this Section. This proposed action also makes other technical amendments to clarify that an application must be filed pursuant to existing regulations in Section 4155 and makes other minor formatting and renumbering edits to affect these amendments.

Benefit of Proposed Regulations

This regulatory action lessens the burden placed on out-of-state licensed occupational therapists that are certified by the Hand Therapy Certification Commission. To become a Certified Hand Therapist 'CHT', a practitioner must be licensed for at least five years and complete 4,000 or more hours of direct practice in hand therapy in order to be eligible to take a rigorous evidence-based examination. Successful completion of a four-hour comprehensive, computer-based test consisting of 200 multiple-choice items, testing knowledge of advanced clinical skills and theory in upper quarter rehabilitation, is required to become a CHT.

These requirements are much more strenuous than the Board's approval requirements: 480-hours required for hand therapy and 240-hours required for physical agent modalities. Thus, the Board is satisfied that the occupational therapists that are CHTs possess the knowledge, skill, and ability to provide advanced practice services in the areas of hand therapy and physical agent modalities that is consistent with the Board's consumer protection mandate. This regulatory action will also make the advanced practice application review process easier for Board staff to perform for advanced practice applicants that are CHTs.

Consistency and Compatibility with Existing State Regulations

The Board has conducted a review of any related regulations and has determined that these are the only regulations dealing with the qualifications and approval of Occupational Therapists providing advanced practice services. Therefore, this regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

This proposed action will reduce California Board of Occupational Therapy staff time (resources) reviewing and evaluating hand therapy and physical agent modality advanced practice applications for applicants who are Certified Hand Therapists.

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact:

The Board has made an initial determination that the proposed regulatory action would not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS

Impact on Jobs/New Business:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

The proposed regulatory action eases regulatory requirements for on an out-of-state occupational therapist that is seeking licensure in California and who is a CHT with the Hand Therapy Certification Commission. Existing regulations require occupational therapists licensed in California to secure Board "approval" to provide advanced practice services in the areas of hand therapy and the use of physical agent modalities. Applicants seeking Board approval must have 480 hours of supervised training in hand therapy and/or 240 hours of supervised training in the use of physical agent modalities; all training hours must be gained within the five-year period preceding the date they file an application to the Board seeking approval. In most cases this adversely affects out-of-state licensed practitioners who are CHTs because their training occurred outside the five year rule even though they have been actively engaged in providing hand therapy services in their respective state(s) of licensure. This proposed action will promote access to competent practitioners that can provide advanced practice services in hand therapy and physical agent modalities.

Cost Impact on Affected Private Persons:

The proposed action does not increase costs for affected individuals (occupational therapists that are CHTs) and may result in a cost savings. The Board is unable to quantify the savings because it does not maintain data on the number of licensees that have applied for advanced practice approval who were CHTs. Nor does the Board monitor the costs of courses or training that may be taken in order to seek Board approval.

The Board has determined that this regulatory proposal promotes access for occupational therapists who are CHTs, by streamlining the application process for them to secure Board approval to provide advanced practice services in California. Existing regulations adversely affect these practitioners because in most cases the training that they completed to obtain certification as a hand therapist falls outside the Board's five year rule. Thus, these occupational therapists are compelled to meet the State requirement by paying for additional courses and training under a California approved therapist hindering independent practice and not making them as competitive in the market place due to their need to be under supervision.

Effect on Housing Costs: None

Effect on Small Business:

The Board has made an initial determination that the proposed regulatory action would have no statewide adverse economic impact on small business. The proposed regulatory action affects occupational therapy practitioners who wish to provide advanced practice services to California consumers.

CONSIDERATION OF ALTERNATIVES

The CBOT must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to the private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel) (916) 263-2701 (Fax)

The backup contact person is:

Heather Martin
[Same contact information as above]

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > Laws and Regulations > Proposed Regulations.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Title 16, Division 39, California Code of Regulations

Proposed Text

Proposed amendments are shown underlined for new text.

Amend Title 16, Division 39, California Code of Regulations to read as follows:

§ 4151. Hand Therapy

(a) Hand therapy services may be performed only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that he or she has met the post professional education and training requirements established by this section as follows:

(1) Education: Completion of 45 contact hours in the subjects listed in Code section 2570.3(e), including 30 hours specifically relating to the hand, wrist, and forearm.

(2) Training: Completion of 480 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to hand therapy.

(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.

(c) An occupational therapist providing hand therapy services using physical agent modalities must also comply with the requirements of section 4152. A maximum of 8 contact hours and 60 hours of supervised on-the-job training, clinical internship or affiliation, paid or voluntary, completed under section 4152 will be credited toward the requirements of this section.

~~(e)~~ (d) An occupational therapist may provide only those hand therapy services he or she is competent to perform.

Note: Authority cited: Sections 2570.3 and 2570.20, Business and Professions Code.

Reference: Sections 2570.2 and 2570.3, Business and Professions Code.

§ 4152. Physical Agent Modalities

(a) Physical agent modalities may be used only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that he or she has met the post professional education and training requirements established by this section as follows:

(1) Education: Completion of 30 contact hours in the subjects listed in Code section 2570.3(f).

(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to physical agent modalities.

(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.

(c) An occupational therapist may use only those physical agent modalities he or she is competent to use.

Note: Authority Cited: Sections 2570.3 and 2570.20, Business and Professions Code.

Reference: Sections 2570.2 and 2570.3, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Acceptance of CHT for Advanced Practice Approval

Section Affected: Title 16, Division 39, California Code of Regulations (CCR), Section 4170

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California consumers. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

Existing regulations contained in 16 CCR Sections 4151 and 4152 identify and define the requirements for occupational therapists to qualify for Board "approval" to provide hand therapy and use physical agent modalities. This action proposes to establish that occupational therapists that hold certification as a "Certified Hand Therapist," with the Hand Therapy Certification Commission, shall be deemed as having met the post-professional education and competency requirements under Business and Professions Code Section 2570.3, by providing the Board proof of their current certification by the Hand Therapy Certification Commission along with their application for advanced practice approval.

Factual Basis/Rationale

Amend 16 CCR Section 4151

Existing language contained in Section 4151 establishes and defines the requirements for an occupational therapist to qualify for Board approval to provide advanced practice services in the area of hand therapy. More specifically a therapist must complete 45 contact hours of post-professional education and 480 hours of supervised training relative to hand therapy to secure Board approval to provide these services independently.

This proposed action will add language that will establish occupational therapists that are certified as a hand therapist (CHT hereafter) by the Hand Therapy Certification Commission shall be deemed to have met the requirement under this Section by submitting proof they are currently certified by the Hand Therapy Certification Commission. This action also makes other minor and technical changes to clarify that an application must be filed pursuant to existing regulations in Section 4155 and makes formatting and renumbering edits to affect these amendments.

The benefit of this proposed action is that it promotes access and reduces barriers for qualified and competent therapists to provide hand therapy services. In order for an occupational therapist to meet the minimum qualifications to be eligible for certification as

“CHT” they are required to complete a minimum of 4,000 hours of direct practice in hand therapy and must pass a rigorous competency-based examination.

In order to be eligible to recertify, every five years the CHT must provide at least 2,000 hours of direct practice in hand therapy and complete 80 contact hours of continuing education. These requirements are more rigorous than the Board’s hand therapy requirements. Thus this proposed action streamlines the application process for qualified and competent therapists, ensures public safety, and ultimately provides more public access to occupational therapists that are authorized to provide hand therapy services.

Amend 16 CCR Section 4152

Existing language contained in Section 4152 establishes and defines the requirements for an occupational therapist to qualify for Board approval to provide advanced practice services in the area of physical agent modalities. More specifically a therapist must complete 30 contact hours of post-professional education and 240 hours of supervised training relative to the use of physical agent modalities to obtain Board approval to provide these services independently.

This proposed action will add language that will establish occupational therapists that are certified as a hand therapist “CHT” by the Hand Therapy Certification Commission shall be deemed to have met the requirement under this Section by submitting proof they are certified by the Hand Therapy Certification Commission. This action also makes other minor and technical changes to clarify that an application must be filed pursuant to existing regulations in 16 CCR Section 4155 and makes formatting and renumbering edits to affect these amendments.

The benefit of this proposed action is that it promotes access and reduces barriers for qualified and competent therapists to use physical agent modalities in the delivery of services to clients. In order for an occupational therapist to obtain certification as “CHT” they are required to complete a minimum of 4,000 hours of direct practice in hand therapy, including the use of physical agent modalities as treatment/therapy adjunctive to hand therapy, and pass a rigorous competency-based examination. In order to be eligible to recertify every five years, the CHT must provide a minimum of 2,000 hours of direct practice experience in hand therapy and complete 80 contact hours of continuing education. These requirements are more much more rigorous than the Board’s physical agent modality requirements (4,000 practice hours vs. 240 supervised training hours). Thus this proposed action streamlines the application process for qualified and competent therapists, ensures public safety, and ultimately provides more public access to occupational therapists that are authorized to use physical agent modalities when providing occupational therapy services.

BUSINESS IMPACT:

This regulation will not have an adverse economic impact on business. Existing regulations require occupational therapists that provide advanced practice services to complete education and training and obtain Board approval. This proposed action will streamline the advanced practice application process for occupational therapists that are CHTs.

ECONOMIC IMPACT ANALYSIS

Background

The purpose of the Board's statutes and regulations pertaining to advanced practices is to ensure occupational therapists providing those services have the knowledge, skill, and ability to deliver those services with safety to the public. This proposed action amends the Board's advanced practice requirements for hand therapy and physical agent modalities to establish occupational therapists that are a "CHT," shall be deemed to have met the requirements to obtain Board approval after submitting an advanced practice application to the Board and providing proof they are certified by the Hand Therapy Certification Commission. This proposed action is designed to reduce regulatory barriers for out-of-state licensed occupational therapists to obtain Board approval to deliver advanced practice services in the area of hand therapy and physical agent modalities to the public.

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate jobs within California. This proposed action reduces existing barriers placed on occupational therapists that are CHTs by streamlining the Board's application process and enabling them to secure Board approval to deliver these services. This proposed action has the potential to make California more attractive to out-of-state practitioners who are considering relocation or temporary assignments in this state.

Creation of New Business or Elimination of Existing Business Within California

The Board has determined the proposed regulatory action will not create new business or eliminate existing business. The proposed action may make California a more attractive State for out-of-state occupational therapists to practice by streamlining its advanced practice requirements and application process to reduce perceived regulatory barriers.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California. The proposed action may make California more attractive for out-of-state occupational therapists by reducing the advanced practice requirements and streamlining the application process to reduce perceived regulatory barriers.

Benefits of Regulations

This proposed regulatory action streamlines the requirements and application process for occupational therapists who have earned the CHT designation and who seek Board approval to provide hand therapy services or use physical agent modalities in California.

This regulatory action does not diminish public safety and will reduce staff time processing advanced practice applications in circumstances where the occupational therapist is a CHT.

This proposed action does not contain any benefit toward worker safety or the state's environment. This proposed action benefits the health and welfare of California residents by promoting and increasing access to occupational therapy practitioners that possess advanced practice skills.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

Alternative:

The Board considered doing nothing; continuing to administer these provisions as they are written. This alternative was rejected because it does not enhance or increase public access to occupational therapists that possess extensive knowledge and superior skill to deliver advanced practice services or streamline the application for those practitioners seeking approval by the Board.

Benefits of this proposed action have been described in detail in various parts of this document. This regulatory action streamlines the requirements and application process for occupational therapists who have demonstrated advanced competency in a specific practice area: hand therapy. Acceptance of the CHT designation could potentially make California a more attractive State for an out-of-state practitioner to move to and practice. This regulatory action does not compromise or diminish the public safety aspects which the existing regulations were designed to provide.

AGENDA ITEM 9

CONSIDERATION AND POSSIBLE ACTION OF ADOPTING PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTION 4170, ETHICAL STANDARDS OF PRACTICE.

The following are attached for review:

- Notice
- Proposed text
- Initial statement of reasons

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (CBOT) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on May 26, 2015.

The Board does not intend to hold a hearing in this matter. If any interested party wishes that a hearing be held, he or she must make the request in writing to the Board. The request must be received in the CBOT office not later than 5:00 pm on May 11, 2015.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as Contact Person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by sections 2570.3 and 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific sections 2570.28, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

Existing regulations contained in section 4170 of Division 39 of Title 16 of the California Code Regulations identify Ethical Standards of Practice that have been adopted by the Board. Any violation of the adopted standards would constitute grounds for the CBOT to take an enforcement action against a licensee. This proposed action provides more detail and clarity regarding the Board's existing professional standards to better serve the profession and public on expected standards of practice or conduct and otherwise assist in identifying potential ethical dilemmas.

Policy Statement/Anticipated Benefits of Proposal

Pursuant to BPC section 2570.25, protection of the public shall be the highest priority of the CBOT in exercising its licensing, regulatory, and disciplinary functions. The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Consistency with Existing State Regulations

The Board has conducted a review of any related regulations and has determined that these are the only regulations dealing with Ethical Standards of practice for occupational therapy practitioners. Therefore, this regulatory proposal is consistent and compatible with existing state regulations.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Local Agency or School District for Which Government Code Sections 17500-17630 Require Reimbursement: None

Business Impact: This regulation will not have a significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with business in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS:

The Board has determined that this regulatory proposal will not have an adverse impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Benefits of the Proposed Regulation

The intent and design of the proposed action is to promote public protection and otherwise enhance the CBOT's regulatory and disciplinary functions.

Cost Impact on Affected Private Persons:

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

Effect on Small Business:

The Board has determined that compliance with proposed regulations would not affect small business. Individual occupational therapy practitioners are required to comply with regulations that have been adopted by the Board which are necessary for public protection. The Board acknowledges the potential exists that the owner or an employee of a small occupational therapy business might subject their license to an enforcement action for violating professional and ethical standards. The Board does not anticipate a significant number of small businesses would be affected and any detrimental impact or hardship that might be incurred would be outweighed by the Board's mandate to protect the health, safety, and welfare of California consumers.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered it considered to the regulation or that has otherwise been identified and brought to its attention would either

potential risks and outcomes.

(3) Occupational therapy practitioners shall respect the client's right to refuse professional services ~~or involvement in research or educational activities.~~

(4) Occupational therapy practitioners shall maintain patient confidentiality unless otherwise mandated by local, state or federal regulations.

(d) Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so.

~~(1) Occupational therapy practitioners shall hold the appropriate credentials for the services they provide.~~

~~(2) Occupational therapy practitioners~~ and shall refer to or consult with other service providers whenever such a referral or consultation is necessary for the care of the client. Such referral or consultation ~~should~~ shall be done in collaboration with the client.

(e) Occupational therapy practitioners shall, through completion of professional development activities required for license renewal or in other ways assure continued competence with respect to his or her own current practice and technology.

(f) Occupational therapy practitioners shall report to the Board any acts committed by another occupational therapy practitioner that they have reason to believe are unethical or illegal in practice, education, research, billing, or documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be allowed by law.

(g) Occupational therapy practitioners shall make all other mandatory reporting to the appropriate authorities as required by law.

~~(e)~~ (h) Occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws, and shall comply with the following:

(1) Practice occupational therapy only when holding a current and valid license issued by the Board, and appropriate national, state, or other requisite credentials for the services they provide; and

(2) Practice occupational therapy within his or her own level of competence and scope of practice.

~~(f)~~ (i) Occupational therapy practitioners shall provide accurate information about occupational therapy services.

~~(1)~~ Occupational therapy practitioners and shall accurately represent their credentials, qualifications, education, experience, training, and competence.

~~(2)~~ (j) Occupational therapy practitioners shall disclose any professional, personal, financial, business, or volunteer affiliations that may pose a conflict of interest to those with whom they may establish a professional, contractual, or other working relationship.

~~(3)~~ (k) Occupational therapy practitioners shall ~~refrain from using~~ not use or participating participate in the use of any form of communication that contains false, fraudulent, deceptive statements or claims.

~~(g)~~ (l) Occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Section 2570.28 of the Occupational Therapy Practice Act.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2570.4, 2570.20 and 2570.36.

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Ethical Standards of Practice

Section Affected: Title 16, Division 39, California Code of Regulations (CCR), Section 4170

Introduction

The California Board of Occupational Therapy (Board) is the state agency that regulates the practice of occupational therapy. The Board's highest priority in exercising its licensing, regulatory, and disciplinary functions is to protect and promote the health, safety and welfare of California consumers. The Board administers, coordinates, and enforces provisions of the laws and regulations pertaining to occupational therapy.

Purpose

Existing regulations identify and provide practice standards that occupational therapy practitioners must abide by in providing services to the public. Any violation of these standards serves as grounds for disciplinary action against a licensee. This proposed action enhances and removes ambiguity regarding several aspects of existing ethical standards by providing more detail and clarity regarding the requirements.

Factual Basis/Rationale

Amend Title of Article 8

The existing title of Article 8 is 'Ethical Standards of Practice.' This proposed action will amend the title to read 'Service Delivery Standards.'

The Board is seeking this amendment because the title is not representative of all sections within Article 8, which includes 16 CCR Section 4170 titled 'Ethical Standards of Practice,' Section 4175 titled 'Minimum Standards for Infection Control', and Section 4172 titled 'Standards of Practice for Telehealth.'

Thus the existing title is too specific and not representative of all language that is incorporated under Article eight. The proposed new title 'Service Delivery Standards' is more appropriate and descriptive of all language incorporated under this Article. The proposed action promotes clarity and specificity.

First Paragraph of 16 CCR Section 4170

The first paragraph of existing Section 4170 establishes the section applies to licensees and limited permit holders. The paragraph has been amended, deleting reference to 'certificate' and adds new language 'or is practicing on a license issued in another state.'

The Board is seeking this modification since occupational therapy assistants are now

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Title 16, Division 39, California Code of Regulations

Proposed Text

Proposed amendments are shown by ~~strikeout~~ for deleted text and underlined for new text.

Amend Title 16, Division 39, Article 8 California Code of Regulations to read as follows:

Article 8. ~~Ethical Standards of Practice~~ Service Delivery Standards

§ 4170. Ethical Standards of Practice

A violation of any ethical standard of practice constitutes grounds for disciplinary action. Every person who holds a license, ~~certificate or a limited permit issued by the board, or is practicing on a license issued by another state pursuant to sections 901 or 2570.4 of the Code,~~ shall comply with the following ethical standards of practice:

(a) Occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination.

(1) An occupational therapy practitioner shall consider how a client's or patient's economic status, age, ethnicity, race, disability, sexual orientation, gender, gender identity, religion, residence, or culture, impact health care practices and incorporate these considerations in the provision of his or her services.

(2) An occupational therapist offering free or reduced-fee occupational therapy services shall exercise the same standard of care when providing those services as for full fee services.

(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing or inflicting harm upon the client or to his or her property.

(1) Occupational therapy practitioners shall not exploit clients in any manner or harm recipients of occupational therapy services, students, research participants, or employees.

(2) Occupational therapy practitioners shall, while a relationship exists as an occupational therapy practitioner, educator, researcher, or supervisor, and within six (6) months of termination of occupational therapy services, avoid relationships or associations that include, but are not limited to emotional, physical, psychological, financial, social, or activities that interfere with professional judgment and objectivity, including avoiding:

(A) Any sexual relationship or activity, even if consensual, with any recipient of service, including any family member or significant other of the recipient of services, and

(B) Any sexual relationship or activity, even if consensual, with any student, or research participant, under direct supervision, and

(C) Bartering for services or establishing any relationship to further one's own physical, emotional, financial, political, or business interests at the expense of the best interests of recipients of services, or the potential for exploitation and conflict of interest.

(c) Occupational therapy practitioners shall collaborate with clients, caretakers or other legal guardians in setting goals and priorities throughout the intervention process.

(1) Occupational therapy practitioners shall fully inform the client of the nature, risks, and potential outcomes of any interventions.

(2) Occupational therapy practitioners shall obtain informed consent from clients involved in research activities and indicate in the medical record that they have fully informed the client of

'licensed' as opposed to 'certified' (SB 821, Committee on Business, Professions and Economic Development, Chapter 307, Statutes 2009); thus, it is no longer necessary for 'certificate' to be referenced in the regulation. Since existing statutes and regulations provide for license exemptions in certain circumstances and conditions, the Board feels it is necessary to adopt language that clarifies that these ethical standards also apply to out-of-state practitioners providing or rendering services under licensing exemptions established in Business and Professions Code Sections 901 and 2570.4 and Title 16 CCR Section 4118.

16 CCR Section 4170(a)

Existing language establishes occupational therapy practitioners shall comply with state and federal laws pertaining to discrimination. The Board is proposing to expand and clarify the meaning of existing 16 CCR Section 4170(a) by adding subsection (1) to list considerations that must be taken into account when providing services to a client or patient and adding subsection (2) to establish that practitioners offering free or reduced-fee services shall exercise the same standard of care as full-fee services.

The Board is seeking these amendments to establish and clarify there are many factors that must be considered when rendering services to different populations. The Board also feels it is necessary to establish and clarify that in the event a practitioner decides to provide free or reduced fee services, the practitioner shall not construe that to mean, in any way, the services can be provided in a substandard manner.

16 CCR Section 4170(b)(1)

Existing language established occupational therapy practitioners must take reasonable precautions to avoid imposing or inflicting harm to a client or to his or her property. The Board is proposing to expand this ethical standard to establish that a practitioner shall not exploit or harm a recipient of occupational therapy services (client), but also shall not harm any students, research participants, or employees.

The Board is seeking this amendment because existing language is too limited in only specifying clients and wishes to clarify that the meaning of 'harm' in this section is also intended to apply to other relationships that a practitioner might be involved in, including relationships with students, research participants, or employees.

16 CCR Section 4170(b)(2)

Existing language establishes that it is an ethical violation to enter into a relationship or activity that interferes with professional judgment and objectivity. The Board is proposing to expand and clarify the meaning of this section by establishing that while a relationship exists as an occupational therapy practitioner, educator, researcher, or supervisor, and within six (6) months of termination of occupational therapy services, practitioners must avoid relationships or associations that involve emotional, physical, psychological, financial, or social relationships that interfere with professional judgment and objectivity.

The Board is proposing further modification to 16 CCR Section 4170(b)(2) by adding subsections (A), (B), and (C).

Section 4170(b)(2)(A) would establish and clarify that it is an ethical violation for an occupational therapy practitioner to enter into a sexual relationship or sexual activities with the recipient of services or a family member or significant other of the recipient of services,

be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposal described in this Notice or would be more cost-effective to the private persons and equally effective in implementing the statutory policy or other provision of law.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations within the timeframes identified in this Notice, or at a hearing in the event that such a request is made by the public.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulation, and any document incorporated by reference, and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from the contact person listed below.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE:

All the information upon which the proposed regulation is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the Board's website as listed below.

CONTACT PERSON:

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Jeff Hanson
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (Tel)
(916) 263-2701 (Fax)
cbot@dca.ca.gov

Website Access: All materials regarding this proposal can be found on-line at www.bot.ca.gov > Laws and Regulations > Proposed Regulations

even if the relationship or activities were consensual.

Section 4170(b)(2)(B) would establish and clarify that it is an ethical violation for an occupational therapy practitioner to enter into a sexual relationship or sexual activities with any student or research participant that is under the direct supervision of the practitioner, even if the relationship or activities were consensual.

Section 4170(b)(2)(C) would establish and clarify that it is an ethical violation for an occupational therapy practitioner to barter for services or any relationship to further the practitioner's own interests at the expense of, or exploitation of, or in a conflict of the interests of the recipient of services.

The Board is seeking these amendments because existing language lacks clarity on the various roles, types of relationships, and factors that would constitute an ethical violation. The Board feels it is beneficial and in the best interests of the public and profession to make specific reference to these issues and dispel any notion these standards would not apply if a sexual relationship or activity is consensual or that they only apply to the recipient of services. In establishing these principals the Board believes it is necessary to identify a time period, six (6) months, from when a professional relationship terminates to when it would be allowable by parties to explore or pursue these otherwise prohibited relationships without committing a violation this section.

16 CCR Section 4170(c)(3)

Existing language establishes it is an ethical violation if a practitioner does not respect a client's right to refuse professional services or involvement in research or educational activities. The Board is proposing to amend the language to delete "or involvement in research or educational activities."

The Board seeks this amendment for brevity and conciseness. Elimination of the language does not change the meaning or intent of this subsection. A client has the right to refuse any and all services in any and all situations. The Board feels it is not necessary to draw any distinction to research or educational activities in the meaning of this subsection.

16 CCR Section 4170(d)

Existing language establishes 'Occupational therapy practitioners shall perform occupational therapy services only when they are qualified by education, training, and experience to do so.' The Board proposes to delete existing Section 4170(d)(1), 'Occupational therapy practitioners shall hold appropriate credentials for the services they provide' and incorporate its meaning into new section, Section 4170(h)(1). Amendment to this language will delete reference to Section 4170(d)(2) but maintains the language in Section 4170(d). The Board is amending existing language 'Such referral or consultation should be done in collaboration with the client,' by deleting 'should' and replacing it with 'shall.'

The Board is seeking these amendments to make the language clearer and formatted in a manner that is better for the section. Modification to the language "Such referral or consultation shall be done in collaboration with the client" was necessary for clarity because existing language appears to makes it an option, where replacing it with "shall" makes it a requirement which is the Board's intent. This correction is consistent with the standards and core values of the profession.

16 CCR Section 4170(e)

The Board is proposing to establish new language in Section 4170(e) requiring practitioners to maintain competence in their own practice area(s) through course work and activities that are specific to the practitioner's own area(s) of practice and/or use of practice-specific technology.

The Board is seeking this new language because it feels it is necessary to clarify the intent of its continuing competence requirement which is for practitioners stay current and aware of emerging trends and technologies in their respective practice areas. The anticipated result is the provision of safer services to the public.

{Existing language in 16 CCR Section 4170(e) is being moved to Section 4170(h)}

16 CCR Section 4170(f)

The Board is proposing to establish new language in Section 4170(f) to define and clarify Business and Professions Code section 2570.36, which requires practitioners to report to the Board any acts committed by an applicant or another licensee that they believe violates any law or regulation administered by the Board or is illegal regarding practice, education, research, billing, or documentation. The proposed language also establishes and clarifies that the reporter cooperate with the Board by providing information, documentation, declarations, or assistance as may be allowed law.

The Board is seeking this new language to define, clarify, administer, and implement the statute. Implementation of this proposed regulation will foster principles supported by the profession, establish and clarify expected standards of conduct for practitioners, and otherwise help resolve ethical dilemmas. The Board must be notified when a practitioner behaves unethically or performs in a negligent or incompetent manner in order for it to fulfill its mandate to protect the public. The intent of this language is not meant to be construed as meaning the reporter of a violation must produce documentation to the Board which they do not have access.

{Existing language in 16 CCR Section 4170(f) is being moved to Section 4170(i)}

16 CCR Section 4170(g)

The Board is proposing to establish new language in Section 4170(g) establishing that 'Occupational therapy practitioners shall make all mandatory reporting to appropriate authorities as required by law.' As an example, occupational therapy practitioners are mandated to report known or reasonably suspected incidents of child abuse or neglect pursuant to Penal Code Section 11166, and elder abuse pursuant to Welfare and Institutions Code section 15630.

The Board seeks this new language to define and clarify the expectations placed on occupational therapy practitioners to make mandated reports as required by law. Adoption of this language will promote the Board's ability to take administrative disciplinary action for these violations.

Existing language in 16 CCR Section 4170(e) is being moved to subsection (h)

Existing language establishes occupational therapy practitioners shall comply with the Occupational Therapy Practice Act, the California Code of Regulations, and all other related local, state, and federal laws. The Board is proposing to add subsection (1) that will establish and clarify occupational therapy practitioners may only practice when they hold a current and active license issued by the Board or other requisite credentials for the services they provide, and add subsection (2) that will establish and clarify that occupational therapy practitioners provide services within his or her own competence level and scope of practice.

The Board is seeking the new language to establish and clarify to practitioners that practicing on an expired license is a violation of law and is grounds for discipline. Existing statutes and regulations which authorize the Board to discipline a licensee for practicing on an expired license are general in nature and lack this clarity. Practitioners should not provide services unless they possess the level of knowledge, skill, and ability (e.g., education and experience) to competently and safely provide services to clients or patients. Implementation of this proposed language will clarify and establish principles and standards that practitioners should already be following, but will now be more easily held accountable should they fail to abide by these standards.

Existing language in 16 CCR Section 4170(f) is being moved to subsection (i).

Existing language establishes occupational therapy practitioners shall provide accurate information about occupational therapy services. The Board is proposing to delete reference to existing subsection (1) and integrate the language 'and shall accurately represent their credentials, qualifications, education, experience, training, and competence' into Section 4170(i).

The Board is seeking this amendment because the language contained in subsection (1) can be easily integrated into the section. This change is technical and formatting in nature; it does not change the meaning and intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(2) is being moved to subsection (j)

Existing language establishes occupational therapy practitioners shall disclose conflicts of interest with those whom they may establish a professional, contractual, or working relationship. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Existing language in 16 CCR Section 4170(f)(3) is being moved to subsection (k)

Existing language establishes an occupational therapy practitioner shall refrain from using or participating in the use of any communication that is false, fraudulent, deceptive statements or claims. The Board is proposing to delete language 'refrain from' and replace it with 'not use.'

The Board is seeking these amendments to make the language specific and more direct as opposed to a passive suggestion. This amendment also makes minor technical formatting changes to place this language in its own subsection.

Existing language in 16 CCR Section 4170(g) is being moved to Section 4170(l)

Existing language establishes occupational therapy practitioners shall report to the Board acts constituting grounds for discipline as defined in Business and Professions Code section 2570.8. The Board is not proposing any change to existing language.

The Board is seeking this amendment to make technical and formatting changes to the Section that does not affect the meaning or intent of the existing regulation.

Amend Authorities and Reference

The Board is proposing a technical edit by adding Business and Professions Code sections '2570.4' and '2570.36' in the reference section for the note of authorities and references.

BUSINESS IMPACT:

This regulation will not have an adverse economic impact on business.

ECONOMIC IMPACT ANALYSIS

Background

The purpose of the proposed regulatory action is to establish and expand existing regulations relating to ethical standards of practice for occupational therapy practitioners. The proposed regulatory action will enhance and foster the Board's role in administering, regulating, and taking disciplinary action against occupational therapy practitioners who violate these principals consistent with its public protection mandate.

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate jobs within California for reasonable compliance with the proposed action. The proposed regulatory action expands, defines, and clarifies standards and principles held by the profession in delivering occupational therapy services to the public and do not have a direct correlation on creation or elimination of jobs for reasonable compliance.

Creation of New Business or Elimination of Existing Business Within California

The Board has determined the proposed regulatory action will not create new business or eliminate existing business within California for reasonable compliance with the proposed action. The Board does not anticipate that any healthcare or rehabilitation businesses seeking to establish itself in California, or that currently does business in California, would decline opening a business or close an existing business based on implementation of professional standards that are widely held, and nationally recognized.

Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California. The proposed regulatory action expands, defines, and clarifies standards and principles for the delivery of occupational therapy services to California consumers and does not contain any inducement for expansion of business.

Benefits of Regulations

This proposed regulatory change serves to:

- Identify and describe principles and standards accepted and supported by the occupational therapy profession.
- Inform the public of established principles and standards to which occupational therapy practitioners should adhere and will be held accountable.
- Make transparent and clear the standards of conduct expected of occupational therapy practitioners.
- Assist occupational therapy personnel in recognition and resolution of ethical dilemmas.
- Enhance and facilitate the Board's regulatory role in enforcing and regulating the profession to ensure public protection.

This regulatory action enhances public safety by letting consumers of services know what they can expect from their service provider and setting forth specific requirements of occupational therapy practitioners.

This proposed action does not contain any benefit toward worker safety or the state's environment. This proposed action benefits the health and welfare of California residents by enhancing the ethical behaviors expected of occupational therapists and occupational therapy assistants practicing in California.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

This regulation does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

Alternative 1:

The Board considered doing nothing and leaving the provisions as they are written. This alternative was rejected because the Board's existing ethical standards do not contain the detail and definition that is contained in this proposed action. Without providing the level of detail contained in this action the Board's ability to take disciplinary action against a licensee may prove to be more difficult or hindered. The level of detail contained in this action will better help practitioners avoid ethical violations and assist the public in identifying and/or avoiding ethical dilemmas with their occupational therapy practitioner.

Alternative 2:

The Board considered incorporating the American Occupational Therapy Association's 'Occupational Therapy Code of Ethics and Ethical Standards' by reference into the Board's ethical standards regulatory language. This alternative was rejected because they standards were developed by a professional organization as opposed to a regulatory agency and the standards were written in a manner that would be difficult to enforce or regulate.

AGENDA ITEM 10

CONSIDERATION AND POSSIBLE ACTION ON PROPOSED AMENDMENTS TO THE BOARD'S DISCIPLINARY GUIDELINES, TO ESTABLISH NEW CRITERIA REGARDING THE BOARD'S REFUSAL TO HEAR PETITIONS FOR REINSTATEMENT WHILE THE PETITIONER IS ON COURT-IMPOSED PROBATION/PAROLE OR SUBJECT TO REGISTRATION AS A SEX OFFENDER (PC 290).

The following are attached for review:

- BPC Section 2570.32, CCR Sections 4146, 4149, 4191.4, Penal Code Section 290, Education Code Section 44010
- Proposed amendments to the Board's Disciplinary Guidelines to add additional rehabilitation criteria and establish new criteria to consider when the Board refuses to hear a petition while the petition is on probation or subject to registration as a sex offender

BPC 2570.32.

(a) A holder of a license that has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of a penalty, including reduction or termination of probation, after a period not less than the applicable following minimum period has elapsed from either the effective date of the decision ordering that disciplinary action, or, if the order of the board or any portion of it was stayed, from the date the disciplinary action was actually implemented in its entirety. The minimum periods that shall elapse prior to a petition are as follows:

(1) For a license that was revoked for any reason other than mental or physical illness, at least three years.

(2) For early termination of probation scheduled for three or more years, at least two years.

(3) For modification of a penalty, reinstatement of a license revoked for mental or physical illness, or termination of probation scheduled for less than three years, at least one year.

(4) The board may, in its discretion, specify in its disciplinary order a lesser period of time, provided that the period shall not be less than one year.

(b) The petition submitted shall contain any information required by the board, which may include a current set of fingerprints accompanied by the fingerprinting fee.

(c) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The board may refuse to consider a petition while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code.

(g) No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

OTHER RELEVANT REGULATIONS, TITLE 16

§ 4146. Definitions.

- (a) "Incompetence" is the lack of possession of or the failure to exercise that degree of knowledge, learning, skill, ability, care or experience ordinarily possessed and exercised by a competent licensed professional.
- (b) "Negligence" is a departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.
- (c) "Gross negligence" is an extreme departure from the standard of care, which under similar circumstances, would have been ordinarily exercised by a competent licensed professional.
- (d) For the purposes of denial, suspension, or revocation of a license, a crime or act shall be considered to be "**substantially related to the qualifications, functions or duties of an occupational therapy practitioner,**" if it evidences present or potential unfitness of a licensee to perform the functions authorized by his or her license or in a manner inconsistent with the public health, safety, or welfare. Such crimes or acts include, but are not limited to, those involving the following:
- (1) Violating or attempting to violate, directly or indirectly, or assisting or abetting the violation of or conspiring to violate any provision or term of the Occupational Therapy Practice Act.
 - (2) Fiscal dishonesty, theft or larceny.
 - (3) An incident involving controlled substances or alcohol to the extent that practice is impaired or a threat to the health or safety of themselves or others.
 - (4) Conviction of a crime involving harassment or stalking (as defined by the Penal Code).
 - (5) Conviction of a crime involving lewd conduct, prostitution or solicitation thereof, or pandering and/or indecent exposure (as defined by the Penal Code).
 - (6) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.
 - (7) Failure to comply with any mandatory reporting requirements.
 - (8) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.2 and 2570.20, Business and Professions Code.

§ 4149. Other Actions Constituting Unprofessional Conduct.

In addition to the conduct described in Section 2570.28(a) and 2570.29 of the Code, "unprofessional conduct" also includes, but is not limited to, the following:

- (a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:
- (1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.
 - (2) A provision that requires another party to the dispute to withdraw a complaint the party has filed with the board.

(b) Failure to provide to the board, as directed, lawfully requested certified copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the certified documents with this time period for good cause, including, but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, medical records.

(c) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privilege. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

(d) Failure to report to the board within 30 days any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The arrest of the licensee.

(3) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(4) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(e) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.28 and 2570.29, Business and Professions Code.

§ 4149.1. Revocation for Sexual Contact.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, which is defined as sexual intercourse or the touching of an intimate part of a patient for the purpose of sexual arousal, gratification, or abuse, with a patient, or has committed an act or been convicted of a sex offense as defined in **Section 44010 of the Education Code**, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

Note: Authority cited: Section 2570.20, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20 and 11425.50(e), Government Code.

PENAL CODE, SECTION 290

(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex Offender Registration Act. All references to "the Act" in those sections are to the Sex Offender Registration Act.

(b) Every person described in subdivision (c), for the rest of his or her life while residing in California, or while attending school or working in California, as described in Sections 290.002 and 290.01, shall be required to register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department, and, additionally, with the chief of police of a campus of the University of California, the California State University, or community college if he or she is residing upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides, and shall be required to register thereafter in accordance with the Act.

(c) The following persons shall be required to register:

Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of Section 187 committed in the perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a, or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289, Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286, 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all elements of one of the above-mentioned offenses; or any person who since that date has been or is hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

(Amended November 6, 2012, by initiative Proposition 35, Sec. 9.)

EDUCATION CODE, SECTION 44010

“Sex offense,” as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, and 45123, means any one or more of the offenses listed below:

- (a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code.
- (b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- (c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.
- (d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955; and prior to September 15, 1961.
- (e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.
- (f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.
- (g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.
- (h) Any attempt to commit any of the offenses specified in this section.
- (i) Any offense committed or attempted in any other state or against the laws of the United States which, if committed or attempted in this state, would have been punishable as one or more of the offenses specified in this section.
- (j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.
- (k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

(Amended by Stats. 2004, Ch. 124, Sec. 1. Effective January 1, 2005.)

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.
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.

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.

**EDITS PROPOSED BASED ON THE BOARD'S CURRENT
DISCIPLINARY GUIDELINES (10/2013), PAGE 25**

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) or crime(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) above.
- (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) Letters of recommendation or work performance evaluations from previous employers, if applicable, or letters of recommendation from the qualifying degree program, if available.
- (6) 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) Whether the act(s) or conviction(s) are substantially related to the qualifications, functions or duties of an occupational therapy practitioner.
- (2) The nature and severity of the act(s) or offense(s).
- (2) (3) The total criminal record.
- (3) (4) The time that has elapsed since commission of the act(s) or offense(s).
- (4) (5) 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) (6) If applicable, evidence of expungement proceedings pursuant to section 1203.4, 1203.4a, or 1203.41 of the Penal Code.
- (7) Work performance evaluations from current or previous employers or letters of recommendation from current or previous colleagues.
- (6) (8) 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~~, pursuant to BPC Section 2570.32, the Board shall first determine whether Petitioner is on court-imposed probation or parole or subject to an order of registration pursuant to Section 290 of the Penal Code.

If the Board refuses to consider a petition for reinstatement, the Petitioner may submit a petition for reinstatement one (1) year from the date of the Board's refusal to consider the petition, or upon the court-ordered removal of the obligation to register pursuant to Section 290 of the Penal Code, whichever is sooner.

If the Petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code, and none of the above criteria applies, the Board shall consider the petition for reinstatement.

IX. PETITION FOR MODIFICATION OF TERMS OF PROBATION

The Board shall evaluate evidence of rehabilitation submitted by the Petitioner, considering the criteria specified in section VII. above.

X. PETITION FOR EARLY TERMINATION OF PROBATION

The Board shall evaluate evidence of rehabilitation submitted by the Petitioner, considering the criteria specified in section VII. above.

1. If the Petitioner is not on court-imposed probation or parole nor subject to an order of registration pursuant to Section 290 of the Penal Code, the Board shall evaluate evidence of rehabilitation submitted by the pPetitioner, considering these the criteria specified in section VII., above.
2. If the Petitioner is on court-imposed probation or parole, the Board shall refuse to consider the petition if both of the following apply:
 - (a) The Petitioner is on court-imposed probation or parole for an act or criminal conviction that is substantially related to the "qualifications, functions or duties of an occupational therapy practitioner," as defined in subdivision (d) of section 4146 of Title 16, of the California Code of Regulations; and
 - (b) The remaining period of court-imposed probation or parole is greater than three (3) years.

If only one of the criteria listed above apply to the Petitioner, then Board staff shall request the Petitioner and the Office of the Attorney General to prepare written briefs regarding whether or not the Board should consider the requested petition for reinstatement. The Board shall evaluate the briefs when deciding whether to refuse to hear the petition.

If the Board refuses to hear a petition for reinstatement, the Petitioner may submit a Petition for Reinstatement one year from the date of the Board's refusal to hear the petition, or at the conclusion of the court-imposed probation or parole, whichever is sooner.

3. If the Petitioner is on court-imposed probation or parole and neither of the above criteria above apply, the Board shall consider the petition for reinstatement and shall evaluate evidence of rehabilitation submitted by the Petitioner, considering the criteria specified in section VII., above.
4. If the Petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code, the Board shall refuse to hear the petition if any of the following apply:
 - (a) The Petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code for a crime or offense committed with a patient or client; or
 - (b) The Petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code for a crime or offense committed with a minor who was under the age of 14, and the Petitioner was more than ten years older than the minor at the time the act was committed; or
 - (c) The Petitioner is subject to an order of registration pursuant to Section 290 of the Penal Code for a crime or offense that was committed less than 15 years prior to the date of submission of the petition for reinstatement.