

## 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 6, 2013.

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 April 19, 2013.

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

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.

CCR Section 4101 identifies functions and duties that the Board delegates its authority to the executive officer to perform. Among these duties, the executive officer is authorized to receive and file accusations and statements of issues, determine the time and date of administrative hearings, issue subpoenas, and approving settlement agreements for revocation or the surrender of a license. The duties are delegated to the executive officer to streamline and increase the efficiency of Board business. This proposed regulatory action will add authority for the executive officer to grant a motion to vacate a default decision filed by a respondent.

This proposed regulatory action will establish and create CCR Section 4146.5, to implement policy that will make adopted Default Decisions and Stipulated Settlements to go into effect 10-days from the date of service (notification) to a respondent unless otherwise specified in an Order of the Board.

This proposed regulatory action amends the Board's existing Disciplinary Guidelines by adding specific references to several general codes that were not previously listed in the document and provides minimum and maximum penalties and recommended probation terms for those violations. In addition, the proposed regulatory action amends many of the Board's standard and optional terms of probation by clarifying a probationer's responsibilities, duties, and Board expectations. Other

amendments incorporated promote communication, eliminate conflict, and adds a new term that would prohibit a probationer from instructing continuing competency or continuing education courses.

This proposed regulatory action amends and updates the Board's existing Uniform Standards Relating to Substance Abusing by incorporating the most recent version of the Department of Consumer Affairs' Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011)" and establishes a definition and criteria for applying these standards.

This proposed regulatory action makes a formatting change to existing CCR Section 4147 by removing all reference to the Uniform Standards Related to Substance Abuse, and places reference into its own newly created section, numbered 4147.5. Thus the Board will no longer incorporate its Disciplinary Guidelines and the Uniform Standards Related to Substance Abuse into a single integrated document; each document will stand alone. The proposed regulatory language makes other technical, punctuation, and renumbering changes due to the addition or deletion of text and the addition of a new probation term.

#### Policy Statement/Anticipated Benefits of Proposal

The intent and design of the proposed action is to streamline and reduce processing times associated with the disciplinary process. Amendment of the Board's Disciplinary Guidelines and incorporation of the most recent version of the Department of Consumer Affairs' Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011)" will enhance and promote efficient administration of its Enforcement and Probation Programs.

The proposed regulatory action enhances and promotes public safety by establishing procedures, methods, and processes to streamline the disciplinary process and improve administration of the Board's Enforcement and Probation Programs.

#### Consistency with Existing State Regulations

This regulatory proposal is consistent with existing state regulations.

#### Document Incorporated by Reference:

California Board of Occupational Therapy Disciplinary Guidelines October 2013

Department of Consumer Affairs' Substance Abuse Coordination Committee's "Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011)"

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

Cost Impact on Affected Private Persons:

The Board has determined that this regulatory proposal will not adversely impact affected private persons (licensed occupational therapy practitioners) that operate in a competent and honest manner.

However, practitioners that have subjected their license to disciplinary action for unprofessional, incompetent, or dishonest practice may lose their privilege to practice through revocation or suspension thereby resulting in a loss of income or otherwise result in costs associated with probation. Any hardship incurred to affected disciplined occupational therapy practitioners is outweighed by the Board's mandate and purpose in protecting the health, safety, and welfare of California consumers.

Effect on Housing Costs: None

Effect on Small Business:

The Board has made an initial determination that the proposed regulatory action would not have a negative impact on small business. The proposed regulatory action is directed toward individuals that are licensed occupational therapy practitioners and are designed to streamline enforcement processes and promotes effective administration of the Board's Enforcement and Probation Programs.

RESULTS OF ECONOMIC IMPACT ANALYSIS

Impact on Jobs/New Business: The Board has determined that this regulatory proposal will not have a significant 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 Regulation to the Health and Welfare of California Residents, Worker Safety, and the State's Environment: The proposed regulatory action will promote and protect the health, safety, and welfare of California consumers by establishing and implementing procedures that will increase the efficiency and handling of disciplinary decisions and enhance and bolster the Board's probation program and the way it deals with licensees with substance abuse issues.

CONSIDERATION OF ALTERNATIVES

The CBOT 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 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) OR (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) OR (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](http://www.bot.ca.gov) > Laws and Regulations > Proposed Regulations.**

**CALIFORNIA BOARD OF OCCUPATIONAL THERAPY  
PROPOSED MODIFIED REGULATORY LANGUAGE  
Title 16, Division 39, California Code of Regulations**

Specific Language

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

**a. Section 4101, Article 1, is amended to read as follows:**

**§ 4101. Delegation of Certain Functions.**

Except for those powers reserved exclusively to the “agency itself” under the Administrative Procedure Act (section 11500 et seq. of the Government Code), the power and discretion conferred by law upon the Board to order an examination pursuant to section 820 of the Code, receive and file accusations and statements of issues; issue notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the dispatch of the business of the Board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings, including the authority to grant a motion to vacate a default decision, approve a settlement agreement for revocation or surrender of a license, or approve an interim license suspension; and the certification and delivery or mailing of copies of decisions under Section 11518 of the Government Code are hereby delegated to and conferred upon the executive officer of the Board.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 480, 2570.1, 2570.6, 2570.17, 2570.19, 2570.20, and 2570.23, Business and Professions Code and Sections 11500 et.seq., and 11415.60, Government Code.

**b. Section 4146.5 is added to Article 5.5, to read as follows:**

**§ 4146.5. Effective Dates of Decisions**

Unless otherwise specified in an Order of the Board, the effective date of a decision made by the Board pursuant to the Administrative Procedure Act (section 11500 et seq. of the Government Code) shall be established as follows:

(a) A Default Decision and Order shall become effective 10-days from the date of service of the decision on the parties.

(b) A Stipulated Settlement and Order shall become effective 10-days from the date of service of the decision on the parties.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 125.6, 125.9, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; and Sections 11425.50(e), 11519, and 11520, Government Code.

**c. Section 4147, Article 5.5 is amended to read as follows:**

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

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code 11400 et seq.), the Board shall ~~consider and apply the comply with the Uniform Standards Related to Substance Abuse and~~ Disciplinary Guidelines (July 2011 October 2013), which are hereby incorporated by reference. The Disciplinary Guidelines shall apply to all disciplinary matters. Deviation from these disciplinary guidelines ~~and orders~~, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of aggravating or mitigating factors; age of the case; or evidentiary problems issues. ~~Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.~~

(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports, "Quarterly Written Report (4/2011)" and "Work Performance Evaluation (02/2011)" shall be obtained from the Board and are hereby incorporated by reference.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 125.6, ~~125.9, 315, 315.2, 315.4~~, 775, 480, 481, 482, 490, 496, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31 and 2570.32, Business and Professions Code; and Section 11425.50(e), Government Code.

**d. Section 4147.5 is added to Article 5.5, to read as follows:**

**§ 4147.5. Uniform Standards Related to Substance Abuse.**

(a) The Board shall also apply, as required, the Department of Consumer Affairs' Substance Abuse Coordination Committee's Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011), which are hereby incorporated by reference. The Uniform Standards describe the mandatory conditions that apply to a substance abusing licensee, except that the Board may impose more restrictive conditions if necessary to protect the public. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.

(b) If the conduct found to be grounds for discipline involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for the purposes of section 315 of the Code. If the licensee does not rebut that presumption, in addition to any and all

relevant terms and conditions contained in the Disciplinary Guidelines, the Uniform Standards Related to Substance Abusing Licensees shall apply as written and be used in the order placing the licensee on probation.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 315, 315.2, 315.4, 2570.27, Business and Professions Code; and Section 11425.50(e), Government Code.

# CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

## INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Regulations pertaining to Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

Sections Affected: Title 16, Division 39, California Code of Regulation (CCR) Sections 4101, 4146.5, 4147, and 4147.5

### Introduction:

The California Board of Occupational Therapy (Board) is the state governmental agency that licenses occupational therapy practitioners and regulates the practice of occupational therapy. The Board administers, coordinates, and enforces provisions of the Occupational Therapy Practice Act. 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.

This proposed regulatory action seeks to add authority for the Board's executive officer to grant a motion to vacate a default decision, establish and create a policy to make default decisions and stipulated settlements become effective ten (10) days after service on a respondent, and amend and update the Board's Disciplinary Guidelines and Uniform Standards Related to Substance Abusing Healing Arts Licensees.

### Specific Purpose of each adoption, amendment or repeal:

#### **AMENDMENT TO CCR SECTION 4101 – DELEGATION OF CERTAIN FUNCTIONS**

This proposed regulatory would delegate the Board's power and discretion to the executive officer to grant motions to vacate default decisions on a showing of "good cause" thus allowing a respondent an administrative hearing, without having to forward the matter to the Board. This proposed regulatory action does not delegate the Board's power and discretion to the executive officer to deny a motion to vacate a default decision. In circumstances where the executive officer could not render a determination that "good cause" exists pursuant to Government Code Section 11520(c), the motion would be forwarded to the Board for consideration.

*The Board is seeking these regulatory changes due to various newspaper articles throughout the State that have documented perceived inefficiencies in the way, manner, and timeliness that regulatory agencies resolve disciplinary matters, especially as they relate to consumer protection and public safety. Existing Board procedures require enforcement staff to prepare mail ballots or arrange and coordinate a meeting of the Board to consider these motions. This extends the processing time of these disciplinary matters and results in extra mailing and meetings costs.*

*The anticipated benefit of this proposed regulatory action is more efficient and expedient processing of motions to vacate default decisions and ultimately reduced resolution times for disciplinary matters. This proposed regulatory action is a proactive approach to resolve disciplinary matters in a timely manner and addresses public concerns regarding perceived inefficiencies in the manner, way, and timeliness that disciplinary matters are resolved. This proposed regulatory action will ultimately promote and enhance the Board's mission to protect public safety.*

## **ADOPT CCR SECTION 4146.5 – EFFECTIVE DATES OF DECISIONS**

This proposed regulatory action would establish that decisions stemming from default, or a stipulated settlement, would go into effect ten (10) days from the date of service on a respondent unless otherwise specified in the Disciplinary Order.

Default Decisions - Pursuant to Government Code (GC) Section 11520 the Board is authorized to act when a respondent fails to request a hearing to contest charges filed against them or who fails to appear for a scheduled hearing through default. The fundamental purpose of Default Decisions is to bring finality to disciplinary matters when a respondent does not request a hearing or fails appear for a scheduled hearing. Section 11520(c) provides a respondent may file a motion to vacate a decision to avoid implementation of the license revocation to schedule a hearing or to reschedule a hearing on a showing of "good cause." Pursuant to GC Section 1520(c), a respondent must submit a written motion requesting the Board vacate the decision within seven (7) days from the date respondent is served notice of the Board's decision to proceed with license revocation by default.

Pursuant to GC Section 11519(a), default decisions become effective 30 days from the date of service on a respondent unless the Board specifies a lesser period. This proposed regulatory action would establish that default decisions adopted by the Board would become effective ten days from the date of service of the decision since a respondent only has seven days to file a motion requesting the decision be vacated (or set aside). Thus, an effective date of 30 days from the date of service is not necessary; having the decision become effective ten days from the date of service provides more timely and efficient resolution of the disciplinary matter.

Stipulated Settlements - Stipulated Settlements and Disciplinary Orders are a result of negotiations between a respondent and their counsel, if applicable, the Office of the Attorney Generals (AGO), and coordinated with Board staff subsequent to respondent filing notice they wish to contest the charges filed against them in an administrative hearing. Often proposed settlement agreements are negotiated and agreed upon by the respondent a month or more in advance of the Board's opportunity to review and adopt or not-adopt the proposed settlement placing a respondent on probation, or acceptance by the executive officer of a settlement involving license surrender or revocation. Since the respondent has agreed to the terms and conditions of the settlement (and in doing so, voluntarily waives all other rights afforded in the Administrative Procedures Act) any element of surprise or need for time to formulate an appeal or request reconsideration is eliminated.

Existing Board procedures make stipulated settlements effective 30-days from the date the respondent is served notice the settlement has been adopted by the Board, unless the Board specifies a lesser period as authorized under Government Code Section 11519(a). This proposed regulatory action would make stipulated settlements effective ten (10) days after service to respondent that the settlement has been adopted by the Board or accepted by the executive officer.

*The Board is seeking these regulatory changes to more timely and efficiently resolve disciplinary matters including removing from practice a licensee whose license is revoked or Board-monitoring of a licensee placed on probation. Settlements provide consumer protection in a cost-effective manner.*

*Moreover, these changes address the concerns of perceived inefficiencies of regulatory agencies documented in various newspaper articles throughout the State. This proposed action is designed to address these concerns by adopting methods and procedures that streamline and reduce disciplinary action processing times without infringing on or inhibiting a respondent's rights, while increasing the protection of California's consumers.*

*The anticipated benefit of this proposed regulatory action is more efficient and expeditious processing and handling of final disciplinary decisions stemming from default decisions and stipulated settlements. This proposed regulatory action is a proactive approach to addresses public concerns regarding perceived inefficiencies in the manner, way, and timeliness that disciplinary matters are resolved. This proposed regulatory action is consistent with and promotes the Board's mission to protect public safety.*

## **AMEND SECTION 4147 – DISCIPLINARY GUIDELINES**

Disciplinary Guidelines are designed to bring consistency to disciplinary decisions. They identify maximum and minimum penalties for various acts and offenses that constitute violations and establish and set forth probation terms that are appropriate to the act(s) or offense(s). Disciplinary Guidelines are used by administrative law judges, attorneys, occupational therapy practitioners, the Board, and others involved in the disciplinary process.

### Text of 4147

This proposed regulatory action strikes all existing references relating to the “Uniform Standards Related to Substance Abuse” and moves it to a newly created Section numbered 4147.5. The proposed regulatory action amends existing text in the Section 4147 by adding “aggravating” factors to examples that are to be considered when or if there is a deviation in a Disciplinary Order. It also makes a minor technical edit by deleting the word “problems” and replaces it with “issues” as it relates to evidence within meaning of this Section. This amendment is necessary to establish and make clear that both “mitigating” and “aggravating” factors may be considered when deviating from recommended penalties.

## Disciplinary Guidelines Document (Incorporated by Reference)

The Board's existing Disciplinary Guidelines document incorporates the Uniform Standards Related to Substance Abuse into a single document. This proposed regulatory action will strike all existing text related to the Uniform Standards Related to Substance Abuse from the Disciplinary Guidelines to make each a distinct, stand-alone document.

As a result several minor technical edits are required to the cover, revision date, Table of Contents, and page numbering due to the deletion of existing language and addition of new language.

Amendment to Introduction: The sentence "For the purposes of this document, the term "license" includes the occupational therapy assistant certificate" is being deleted since it is no longer necessary to draw this distinction. SB 821, Chapter 307, Statutes 2009, was passed establishing that occupational therapy assistants shall be referred to as being "licensed" as opposed to "certified".

Amendment to Section IV: A minor technical edit is being affected to the existing title "Disciplinary Guidelines Penalties For Violations-Minimum/Maximum" to "Penalties For Violations Minimum/Maximum. This section identifies maximum and minimum penalties for various violations and offenses. It also identifies standard and optional probation terms that should be considered in disciplinary orders placing a respondent on probation based on the violation(s) or offense(s) that were committed. In addition to existing language contained in this section the Board is proposing to add the following violations, minimum and maximum penalties, and recommended probation terms for the following:

### 2570.185 – Patient Records

Maximum: Revocation

Minimum: Stayed revocation and 1 year probation under the following conditions:  
(a) Standard conditions #1-#14  
(b) Option condition number 28

### 2570.36 – Required Reporting of Violations to the Board

Maximum: Revocation

Minimum Stayed revocation and 1 year probation  
(a) Standard conditions #1-#14

### 123 – Conduct constituting subversion of licensing examination; penalties and damages

Maximum: Denial of application for licensure or revocation

Minimum: Stayed revocation and 3 years of probation under the following conditions:  
(a) Standard conditions #1-#14

498 – Fraud, deceit or misrepresentation as grounds for action against license

Maximum: Revocation

Minimum: Stayed revocation and 3 years of probation under the following conditions:  
(a) Standard conditions #1-#14

499 – Action against license based on licentiates actions regarding application of another

Maximum: Revocation

Minimum: Stayed revocation and 2 years on probation under the following conditions:  
(a) Standard conditions #1-#14

581 – Purchase or fraudulent alteration of diplomas or other writings

Maximum: Revocation

Minimum: Stayed revocation and 3 years of probation under the following conditions:  
(a) Standard conditions #1-#14

582 – Use of illegally obtained, altered, or counterfeit diploma, certificate, or transcript

Maximum: Revocation

Minimum: Stayed revocation and 3 years of probation under the following conditions:  
(a) Standard conditions #1-#14

583 – False statements in documents or writings

Maximum: Revocation

Minimum: Stayed revocation and 2 years of probation under the following conditions:  
(a) Standard conditions #1-#14

584 – Violation of examination

Maximum: Revocation

Minimum: Stayed revocation and 3 years of probation under the following conditions:  
(a) Standard conditions #1-#14

17500 – False or misleading statements

Maximum: Revocation

Minimum: Stayed revocation and 2 years of probation under the following conditions:  
(a) Standard conditions #1-#14

This proposed regulatory action also makes a minor technical change to the existing title pertaining to Section 810 from “Fraudulent Claims” to “Grounds for disciplinary action against health care professional”

#### Section V - Standard Conditions of Probation

These conditions are to be included in all cases relating to probation and are numbered #1-#14. The Board is proposing to amend the following existing terms and establishing a new condition (#12) prohibiting a probationer from instructing continuing competency or continuing education courses as further described below:

##### Amend Term #1-Obey All Laws

Existing language requires a respondent to obey all federal, state, and local laws and regulations governing the practice of occupational therapy in California. The Board is deleting the language that specifically references occupational therapy regulations because it is unnecessary. Compliance of all federal, state, and local laws would include any regulations. Existing language requires a respondent to notify the Board in writing, within 5-days, of any violation of the law. The Board is striking reference to any “violation” of law amending the language to clarify that such notifications shall occur with “arrests and convictions”. In addition, the Board is adding language to this condition that will establish and clarify that any failure to abide with a criminal court order or other regulatory agency order will constitute a violation of this condition.

##### Amend Term #2-Compliance with Probation and Quarterly Reporting

Existing language specifies that a respondent shall fully comply with the terms and conditions of probation and cooperate with representatives of the Board. The Board is proposing to clarify and enhance this term by adding language that within the meaning of this term a respondent is responsible for completing all requirements necessary to implement probation. Amendments to this term also will establish and clarify that any failure to respond to the Board within a specified time period or any failure to accept or pick up certified mail shall constitute a violation of this term.

##### Amend Term #4-Notification of Address and Telephone Number Changes(s)

Existing language requires a respondent to notify the Board in writing, within five (5) days of any change in residence, work, and both residence and work telephone numbers. Amendment to the term will now require a respondent notify both the Board and his or her probation monitor of any of these changes. The amendment also clarifies that if a respondent uses a Post Office Box for mailing purposes, he or she must also provide his or her physical residence address.

##### Amend Term #5-Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice

Existing language establishes that if a respondent is practicing or residing out-of-State, or is not practicing in California, his or her probation is tolled (suspended, the probation term does not run). Within the meaning of this term, it identifies several conditions that remain applicable and in effect even though probation is tolled (e.g. respondent is still required to submit quarterly reports, complete examination requirements, and complete education assignments). Amendments to this term seek to clarify and establish that the

address change requirement in term #4 and cost recovery requirement in term #11 would remain in effect in the event probation is tolled.

#### Amend Term #6-Notification to Employers(s)

Existing language establishes that a respondent must notify his or her employer and supervisor that his/her license has been placed on by providing them with a copy of the disciplinary order. Existing language establishes that the Board be furnished the name, address, and telephone number of the respondent's health related employer(s) and supervisor(s). Existing language establishes a respondent is responsible for having his or her employer submit quarterly work performance evaluations to the Board.

Amendments to this term clarify and establish that a respondent shall request and obtain the Board's written approval to deliver occupational therapy services in health related employment settings. Amendments also clarify and establish that email addresses and fax numbers shall also be provided for a respondent's employer(s) and supervisor(s) and that an authorization and consent form be signed by respondent to facilitate communication between the employer, supervisor, and the Board. Further amendments outline the Board's expectation for a supervisor to notify the Board immediately of any instance of suspected substance abuse on behalf of a respondent.

#### Amend term #7-Employment Requirements and Limitations

Existing language establishes that a respondent must work in his or her licensed capacity while on probation. Existing language identifies work settings that typically do not afford a great degree of supervision or no supervision and are prohibited except as approved in writing by the Board. Amendments to this term will establish that 40 hours of work per month will constitute practice. Amendment to this term adds language clarifying that placement agencies, third party employers, home health, and working as a traveler, would require a respondent to secure the Board's written approval to function in these capacities in advance of commencing employment. Amendment to this term also clarifies that in the event a cease practice order is issued or a respondent's license is temporarily suspended, the period of probation shall be extended for that period of time. Deletion of reference that a respondent must work no less than six (6) continuous months is not necessary, is confusing, and conflicts with language in term #5 that establishes a Respondent's probation is tolled for non-practice. Further reference that a respondent shall work in his or her licensed capacity is being struck because it is redundant since it is also established in term #5.

#### Amend term #8-Supervision Requirements

Existing language prohibits a respondent from functioning as a supervisor during the period of probation except as approved in writing by the Board. Modification to this term clarifies that such written approval must be provided in advance of any respondent functioning as a supervisor.

#### Amend term #9-Continuing Education Requirements

Existing language establishes that the Board shall assign continuing education that is relevant to the violation committed. Modification to this term will establish the deadline to complete the continuing education assignment shall be within six months of the effective date respondent was placed on probation.

#### Amend term #11-Cost Recover Requirements

Existing language establishes where cost recovery is ordered, the respondent shall make timely payment as directed. Modification to this term will allow a respondent to propose a payment plan of their own as long as full reimbursement is received six months prior to the end of the probation terms. Amendment to this term will also delete existing confusing language that is contained in Business and Professions Code Section 125.3, authorizing the Board to conditionally renew or reinstate a license due to financial hardship. Deletion of this language from the term does not mean a respondent will be prohibited from requesting an extension under Section 125.3 for financial hardship.

#### Establish (new) term #12-Instruction of Continuing Competency/Continuing Education Coursework

The Board is proposing to establish a new standard term of probation that would prohibit a respondent that has been placed on probation from instructing or teaching continuing education coursework or any courses used to satisfy advanced practice requirements.

#### Amend existing term #12 to #13-Violation of Probation

Existing language establishes that if a respondent violates any term or condition of probation the Board can seek to revoke probation. In the event an Accusation or Petition to Revoke Probation is filed probation shall be extended until the matter becomes final. Proposed modification to the term establishes and clarifies that in the event an Accusation or petition to Revoke Probation is filed thereby extending probation, respondent shall continue to abide by all terms and conditions associated with the order that placed them on probation.

#### Section VI-Optional Conditions of Probation

Existing current Optional Conditions of Probation are numbered #14-#31. Since the proposed new addition of standard term #12, optional terms are now re-numbered #15-#32 and remain in the same existing order.

#### Amend existing term #14 to #15-Examination by Physician

Existing language establishes that the Board may require a respondent to submit to a physical evaluation by a physician and surgeon within 60-days of the effective date of the decision. Existing language established the physician and surgeon shall submit his or her report regarding the respondent's fitness to practice to the Board within 90-days of the effective date of decision. Proposed modifications to this term reduce the timeframe for a respondent to submit to a physical evaluation from 60-days to 45-days and that the respondent's choice of physician and surgeon to perform the evaluation must be approved by the Board. Proposed modification to this term reduces the timeframe for the approved physician and surgeon to submit his or her report to the Board from 90-days to 60-days.

#### Amend existing term #15 to #16-Psychological Evaluation

Existing language establishes the Board may require a respondent to submit to a psychiatric/psychological evaluation within 60-days of the effective date of the decision.

Existing language establishes that the evaluator submit his or her report regarding respondent's fitness to practice to the Board within 90-days of the effective date of the decision. Proposed modifications to this term reduce the timeframe for respondent to submit to the evaluation from 60-days to 45-days and that the respondent's choice of evaluator to perform the evaluation must be approved by the Board. Proposed modification to this term reduces the timeframe for the approved evaluator to submit his or her report to the Board from 90-days to 60-days.

#### Amend existing term #16 to #17-Psychotherapy

Existing language establishes the Board may require a respondent participate in psychotherapy and provide the names of one or more proposed therapists within 60-days of the effective date of the decision. Existing language establishes the psychotherapist must submit his or her initial report to the board within 90-days of the effective date of the decision. Proposed modifications to this term reduce the timeframe for a respondent to secure therapist approval from 60-days to 45-days. Proposed modifications establish that the respondent shall commence with therapy within 10-days of receiving notice a therapist has been approved by the Board. Proposed modifications will reduce the timeframe for the approved psychotherapist to submit his or her initial report to the Board from 90-days to 60-days. Proposed modifications clarify that in the event the therapist finds the respondent is not fit to practice, or can only practice safely with restrictions he or she must notify the Board within 5 working days.

#### Amend existing term #19c to #20c-Group Support/Recovery Meetings

Existing language establishes the Board may require a respondent to attend support or recovery group meetings (e.g. Alcohol Anonymous, Narcotics Anonymous, other similar facilitated groups, etc.) to support his or her recovery efforts and submit verification of attendance with his or her quarterly written report. Proposed modification to the language will establish and clarify that the Board may request documentation verifying attendance in support/recovery groups at any time.

#### Amend existing term #20 to #21-Abstain from Controlled Substances

Existing language establishes the Board may require a respondent to abstain from the personal use or possession of controlled substances, barring legally prescribed medications for a bona fide illness or condition. Existing language requires a respondent who has been prescribed medications to have his or her prescribing health professional submit a report to the Board within 14-days verifying the prescription and other pertinent information. Proposed modification to the language adds "except" to the language qualifying that this term does not apply to lawfully prescribed medications for a bona fide illness or condition. Proposed modification to the language also clarifies that the respondent shall cause the prescribing health professional to submit a report to the Board regarding refills or upon any new order extending an existing prescription.

#### Amend existing term #22 to #23-Submit Biological Fluid or Specimen Samples

Existing language establishes the Board may impose drug and/or alcohol testing to verify that a respondent is abstaining from dangerous or controlled substances and/or alcohol, barring any medication that is legally prescribed. Within the meaning of this section the Board is proposing to have two versions (a) and (b) as further described below:

Proposed language for term #23a would be applied to a respondent that has been determined to meet the definition of a “substance abusing licensee” pursuant to newly proposed California Code of Regulations section 4148(b). Modifications proposed to existing language serves to establish and clarify that a respondent shall enroll in the Board’s drug-testing program within 2-days of the effective date of probation and otherwise comply with contracting requirements with the Board’s testing vendor . Modifications to existing language regarding the frequency of testing is being aligned with the Uniform Standards for Substance-Abusing Healing Arts Licensees (April 2011) or more specifically testing in the first year of probation shall be 52-104 times per year and for subsequent years 36-104 times per year. Modification to existing language will clarify and establish a respondent may request, in writing, a modification to the frequency of testing after the first year of probation.

Proposed language for term #23b would be applied to a respondent that committed a violation involving drugs and/or alcohol but who is not considered to be a “substance abusing licensee”. The primary difference between terms #23a and #23b, is the degree and frequency of drug/alcohol testing. This condition is necessary in the event that a licensee successfully rebuts the presumption that they are a substance abusing licensee in CCR Section 4147.7(b) but who opinion of an ALJ or the Board drug and/or alcohol testing is still necessary to preserve public protection, although at a lesser level.

#### Amend existing term #24 to #25-Worksite Monitor

Existing language allows for the possibility for the Board to establish and approve a work site monitor to monitor a respondent’s work performance. Amendment to this term will establish that a respondent will be required to complete a consent form to facilitate and allow free communication between the worksite monitor and the Board.

#### Recommended Language for Issuance and Placement of a License on Probation and Reinstatement of a License.

In order to assist administrative law judges with orders regarding these matters the Board is providing examples or template language that may be used specific to these situations.

*The Board is seeking these changes to effectively implement, establish, and bring clarity and transparency to legislation (SB 1441, Chapter 548, Statutes 2008) mandating consistency and uniformity in the way health related regulatory agencies deal with substance abusing healing arts licensees.*

*The Board is seeking to amend to its Disciplinary Guidelines to incorporate several general codes and provisions that constitute violations which were not listed in the existing guidelines and identify appropriate minimum and maximum penalties for those violations or offenses; and if warranted identify appropriate probation terms and conditions. This will alleviate any necessity to applying codes that are generally applicable, as opposed to the specificity provided in the codes that are being added.*

*The Board is seeking to amend its existing terms and conditions of probation to expand, and bring clarity to the many facets and details surrounding the terms and conditions,*

*their meaning, foster communication, eliminate conflict, and otherwise clearly establish behavioral expectations of licensee's that are placed on probation. The proposed amendments aligns the frequency of drug and/or alcohol testing with that of current standards developed by the Department of Consumer Affairs' Substance Abuse Coordination Committee and otherwise tightens deadline dates for probationers to accomplish various tasks associated with their Disciplinary Order (e.g. completing continuing education, submitting to psychological or physical evaluations, etc.). In expanding and clarifying the requirements and expectations for probationers, the Board will be in a better position to be successful in administrative proceedings to seek further discipline against a licensee for violations of the terms and conditions.*

*The anticipated benefit of this proposed regulatory action is more effective, efficient, and consistent administration and handling of Disciplinary Decisions and monitoring of licenses that have been placed on probation. The proposed regulatory action ultimately provides increased protection to the public as it relates to practitioners that have been placed on probation and is otherwise consistent with the Board's mandate to administer and regulate standards related to the profession and protect public safety.*

## **ADOPT CCR SECTION 4147.5 – UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE**

All existing reference and language pertaining to the Uniform Standards for Substance Abuse is being struck from Section 4147 and moved to this newly proposed Section 4147.5.

The Uniform Standards Related to Substance Abuse set forth mandatory conditions that apply to substance abusing licensees. Adoption of Section 4147(a) will incorporate by reference the most up to date version of the Department of Consumer Affairs' Substance Abuse Coordination Committee's (SACC) Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011) into regulation.

Adoption of Section 4147(b) will establish that any licensee or applicant that has been found to have committed an act or offense involving drugs and/or alcohol shall be presumed to be a substance abusing licensee. However, language contained in this proposed regulatory action allows for a respondent to refute the presumption by providing evidence and testimony of his or her behalf. This proposed regulatory action establishes and clarifies that situations where a licensee or applicant was not successful refuting the presumption, the Uniform Standards Related to Substance Abusing Healing Arts Licensee shall apply as written and be used in the order placing the licensee or applicant on probation.

*The Board is seeking these changes to incorporate the current and total embodiment of the SACC's Uniform Standards Regarding Substance Abusing Healing Arts Licensees (April 2011) into regulation. Existing language relating to the Uniform Standards was incorporated with the Board's existing Disciplinary Guidelines and was not a complete embodiment of the initial version of SACC's Uniform Standards. The Board's existing Uniform Standards were distilled down to incorporate issues and items that pertained directly to a licensee (probationer) and omitted items and issues that pertained to the*

*Board. This proposed regulatory action separates the Disciplinary Guidelines and Uniform Standards Related to Substance Abuse and makes all aspects of the Uniform Standards transparent in keeping with the spirit and intent of SB 1441, Chapter 548, Statutes 2008. Since there are varying opinions and arguments that can be made on what constitutes a “substance abusing licensee” this proposed regulatory action will establish a definition or parameters in Section 4147(b) to address the issue thereby establishing when the Uniform Standards for Substance Abusing Healing Arts Licensees (April 2011) applies.*

*The anticipated benefit of this proposed regulatory action is enhanced and improved administration, coordination, and enforcement of disciplinary matters where licensees have been found to have used or abused controlled substances and/or alcohol in an illegal or dangerous manner. This proposed regulation will protect the public by establishing consistent and uniform standards on how the Board deals with substance abusing licensees.*

#### DOCUMENTS INCORPORATED BY REFERENCE:

- California Board of Occupational Therapy Disciplinary Guidelines (October 2013)
- Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (April 2011)

#### UNDERLYING DATA:

None

#### FISCAL IMPACT IN GENERAL:

This proposed regulatory action will not have a significant adverse economic impact on business.

This proposed regulatory action will not have an adverse economic impact on affected individuals (licensees who fall under the Board’s jurisdiction) who comply with the laws, regulations, and standards of occupational therapy practice.

#### ECONOMIC IMPACT ANALYSIS/ASSESSMENT

##### Background

This proposed regulatory action deals with the way the Board administers, coordinates, and enforces disciplinary matters and decisions against licensees and applicants and how it administers and enforces its probation program and handling of licensees with substance abuse issues.

### Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate a significant number of jobs within California. The Board is mandated to coordinate, regulate, and enforce standards relating to the profession of occupational therapy. The highest priority of the Board is public protection. Thus when appropriate the Board is compelled to initiate disciplinary action against practitioners who violate occupational therapy standards of practice and revokes the individual's privilege to practice for the sake of public safety.

### 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.

### Expansion of Business Within California

The Board has determined the proposed regulatory action will not expand business within California.

### Benefits of Regulations

The proposed regulatory action will promote and protect the health, safety, and welfare of California consumers by establishing and implementing procedures that will increase the efficiency and handling of disciplinary decisions and enhance and bolster the Board's probation program and the way it deals with licensees with substance abuse issues.

### 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 being proposed or would be less burdensome to affected private persons and business than the proposed regulations.