

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 October 8, 2012.

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 Board office not later than 5:00 pm, September 24, 2012.

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 Business and Professions Code Sections 122, 144, 163.5, and 2570.20, and to implement, interpret or make specific Section 144, 2570.5, 2570.9, 2570.10, 2570.11, and 2570.16, of said Code, the Board is considering changes to Division 39 of Title 16 as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulation makes formatting changes to existing language, amending the title of Article 3, by deleting references to "Certificate" and "Inactive Status," and placing "Inactive Status" into newly proposed Article 3.5 that will be titled "Inactive and Retired Status." The reference to "Certificate" is obsolete since recent legislation deleted all references to occupational therapy assistants as being "Certified" and replaced it with "Licensed" in SB 821(Chapter 307, Statutes 2009).

The Board proposes to add new language, section 4128, to establish and implement Business and Professions Code (BPC) Section 2570.17, which authorizes the Board to issue retired licenses. Existing laws and regulations prohibit anyone from representing that they are an occupational therapy practitioner unless they are licensed by the Board. The proposed regulations are intended to allow a retired practitioner to use references and titles that they are an occupational therapy practitioner as long as they clearly indicate they are retired. The proposed regulations establish requirements for a license being placed on Retired Status, establishes that a license on Retired Status can be disciplined, and sets forth requirements and procedures for reactivating a license.

Existing language in Section 4130 identifies fees the Board charges for initial licensing, renewals, and other functions. The Board is proposing to implement BPC Section 2570.16, by establishing a new fee to process Applications for Licensure (\$50) and implement BPC Section 2570.17 by establishing a new fee to process applications when a license requests Retired Status (\$25).

The Board also is proposing to increase the biennial license renewal fee and the (pro-rated) initial license fees from \$150 to \$170. The proposed regulation also removes obsolete and outdated language that was needed to implement a transition from annual to biennial renewals in 2007, and makes other minor formatting changes.

The proposed adoption and amendments to the regulations incorporating by reference the following forms:

- Application for Retired License Status, Form ARS (New 7/2012)
- Application to Restore License to Active Status, Form ARL (New 7/2012)
- Initial Application for Licensure, Form ILA (Rev 8/2012)

The specific benefit anticipated by the proposed adoption of the regulation is to establish and implement statutes authorizing the Board to issue licenses on retired status. The proposed regulatory action is designed to allow individuals who place their license on retired status to provide specific representations to the public, which would otherwise be prohibited without implementation of this proposed regulatory action. Adoption of the proposed regulatory action will benefit licensees who retire by charging only a \$25 fee for retired status rather than an on-going biennial renewal fee and promotes transparency in rules that the Board establishes pertaining to occupational therapy practitioners making public representations of their license status; this serves to promote and protect public safety.

The specific benefit anticipated in establishing adopting and amending the regulations is to implement the statutes authorizing the Board to charge a variety of fees to generate revenue and ensure the Board is self-supporting. The specific benefits in establishing a fee for processing the application for licensure and for increasing the Board's biennial renewal and inactive fees is to increase revenue to align revenues with projected operating expenses. The proposed regulatory action is designed to ensure future fiscal solvency of the Board, whose mission is to regulate occupational therapy by serving and protecting California's consumers and licensees.

The proposed regulations are 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

Non-discretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to Any 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 businesses including the ability of California businesses to compete with businesses in other states.

RESULTS OF ECONOMIC IMPACT ANALYSIS:

The Board has determined that this regulatory proposal will not have any 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.

The Board has determined that this regulatory proposal benefits the health and welfare of California's consumers of occupational therapy services by ensuring transparency and appropriate representation by practitioners and ensuring sufficient revenue levels to support projected Board expenditures.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

Minor costs will be imposed on private occupational therapy practices that choose to pay or reimburse their employee's application and renewal fees. Occupational therapy practitioners who do not have an employer that pays for or reimburses a licensee for application and renewal fees will incur minor costs due to the regulation. The regulation proposes to increase existing initial licensing and renewal fees \$20 biennially. The proposed regulations will establish the Board will charge a \$50 fee for the processing of an application for licensure. The proposed regulations will establish that practitioners who wish to represent they are a Retired will be required to pay a one-time processing fee of \$25.

EFFECT ON HOUSING COSTS: None

EFFECT ON SMALL BUSINESS:

There is no cost impact on general small business. Minor costs will be incurred on small occupational therapy practices as outlined above under Cost Impact on Representative Private Person or Business.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative considered by it 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 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 affected private persons and equally effective in implementing the statutory policy or other provision of law.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION:

The Board has prepared an initial statement of reasons that sets forth the reasons for the proposed action and has all the information upon which the proposal is based.

Copies of the exact language of the proposed regulation, any documents 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 Board's website as listed below or upon written request 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
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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
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All materials regarding this proposal can be found on-line at:

www.bot.ca.gov > Laws and Regulations > Proposed Regulations.

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PROPOSED AMENDED REGULATORY LANGUAGE Title 16, Division 39, California Code of Regulations

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

1. The title of Article 3 is amended to read as follows:

Article 3. License, ~~Certificate, and Limited Permit, Inactive Status~~

2. Article 3.5 is added to Division 39 to read as follows:

Article 3.5. Inactive and Retired Status

3. Section 4122, Inactive Status, is renumbered to Section 4127.

4. Section 4128 is added to Division 39, Article 3.5, to read as follows:

§ 4128. Retired Status

(a) A holder of an occupational therapist or occupational therapy assistant license that is current and whose license is not suspended, revoked, or otherwise restricted by the board or subject to discipline, may apply for retired status, upon application and payment of the fee prescribed in section 2570.17 of the Code.

(b) The application shall be on a form prescribed by the Board titled "Request for Retirement Status," Form RRS (Dev. 7/2012), and shall disclose under penalty of perjury whether the licensee has been disciplined by another public agency or been convicted or pled nolo contendere to any violation of any statute in the United States or foreign country.

(c) A license in retired status is not subject to renewal.

(d) The holder of a license in retired status shall not engage in any activity for which an active license is required. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.

(e) An occupational therapist holding a license in retired status shall be permitted to use the title "occupational therapist, retired" or "retired occupational therapist." An occupational therapy assistant holding a license in retired status shall be permitted to use the title "occupational therapy assistant, retired" or "retired occupational therapy assistant." The designation of retired shall not be abbreviated in any way. Failure to comply with this section is unprofessional conduct and grounds for citation or discipline.

(f) In order to restore his or her license to active status the holder of a license in retired status shall:

(1) Complete a form prescribed by the board titled "Request for Activation of License on Retired Status," Form ARS (Dev. 7/2012), and pay the biennial renewal fee in effect at the time the request for activation is received; and.

(2) Satisfy continuing competency requirements as follows:

(A) Complete 24 PDUs, within two (2) years of the date the application for reactivation is received, if the license is in retired status for a period of five (5) years or less, or

(B) Meet one of the requirements set forth in section 2570.14 of the Code if the license is in retired status for a period of more than five (5) years. If qualifying under 2570.14(a), the holder of a license in retired status must complete 40 PDUs as specified in section 4161(g).
(h) A licensee may be granted a license in retired status on no more than two separate occasions.

Authority cited: Sections 2570.10, and 2570.11, Business and Professions Code; Reference: Sections 118, 2570.14, 2570.16 and 2570.17, Business and Professions Code.

5. Section 4130, Article 4, is amended to read as follows:

§ 4130. Fees

Fees are fixed by the board as follows:

(a) The fee for an Initial Application for Licensure (Form xxx, Revised xxx) shall be fifty dollars (\$50).

~~(a)(b)~~ The initial license ~~or certificate~~ fee shall be prorated pursuant to Section 4120(a)(1) and based on a biennial fee of ~~(\$150)~~ one hundred seventy dollars (\$170).

~~(b)(c)~~ The fee for a limited permit is seventy five dollars (\$75).

~~(c) For a license that expires on or before December 31, 2006, the annual renewal fee for a license or certificate is \$150.~~

~~(d) For a license that expires on or after January 1, 2007, the renewal fee shall be in accordance with the following schedule:~~

~~(1) For a license that expires between January 1, 2007, and December 31, 2007, a licensee with an even birth year shall renew for one year and the renewal fee shall be seventy-five dollars (\$75).~~

~~(2) For a license that expires on or after January 1, 2007, and biennially thereafter, a licensee with an odd birth year shall renew for two years and the renewal fee shall be one hundred fifty dollars (\$150).~~

~~(d) (3)~~ For a license that expires ~~on or after~~ before January 1, 2008, 2014, and biennially thereafter, a licensee with an even birth year shall renew for two years and the biennial renewal fee shall be one hundred fifty dollars (\$150).

(e) For a license that expires on or after January 1, 2014, the biennial renewal fee shall be one hundred seventy dollars (\$170).

~~(e)(f)~~ The delinquency fee is one-half of the renewal fee.

~~(f)(g)~~ The renewal fee for an inactive license ~~or certificate~~ is \$25 fifty dollars (\$50).

(h) The fee for an Application for Retired Status (Form xxx, Revised xxx) shall be twenty-five dollars (\$25).

~~(g) (i)~~ The fee for a duplicate license is \$15.

~~(h) (j)~~ The fees for fingerprint services are those charged by the California Department of Justice and the Federal Bureau of Investigation.

Note: Authority cited: Sections 122, 144, 163.5, and 2570.20, Business and Professions Code. Reference: Sections 144, 2570.5, 2570.9, 2570.10, 2570.11, and 2570.16, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulation: Regulations pertaining to establishing a new Retired Status and Fees charged by the Board.

Sections Affected: Title 16, Division 39, Sections 4122 (is renumbered to 4127), 4128 is established, and 4130 is amended.

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's consumers. The Board administers, coordinates, and enforces the provisions of the laws and regulations pertaining to the practice of occupational therapy.

The proposed regulations intend to establish rules and procedures for placing a license on Retired Status and increase fees to ensure revenue collected is more closely aligned with the Board's expenditures. The proposed regulations also make a technical formatting change by creating a new Article Section, 3.5 for Inactive and Retired Status, and moves existing regulations pertaining to Inactive Status into the new article.

SPECIFIC PURPOSE OF EACH ADOPTION, AMENDMENT OR REPEAL:

1. Add Article 3.5. Inactive and Retired Status

The proposed change would amend Article 3 by striking reference to section 4122, Inactive Status, and moving it into newly proposed Article 3.5, Inactive and Retired Status.

Factual Basis/Rationale:

The purpose of the proposed change is to separate, differentiate, and group license statuses into two categories: those that authorize practice and those that do not authorize practice.

2. Renumber existing Section 4122 to 4127, and move it into newly proposed Article 3.5, Inactive and Retired Status.

The proposed change takes existing language in Section 4122 regarding Inactive Status and renumbers it to 4127, and moves it under Article 3.5.

Factual Basis/Rationale:

The purpose of the proposed change is to separate, differentiate, and group license statuses into two categories: those that authorize practice and those that do not authorize practice.

3. Add Section 4128, Retired Status

The proposed language establishes the procedures for the holder of license to apply for retired status, establishes certain qualifications for requesting retired status, establishes a retired license shall not be subject to renewal, clarifies the holder of a retired license shall not engage in any activity that would require an active license, sets forth titles and representations that a retired license holder may use, and establishes procedures for reactivating a license to active status.

Factual Basis/Rationale:

The purpose and design of the proposed regulations are to implement Business and Professions Code (BPC) Section 2570.17 which authorizes the Board to issue licenses on Retired Status. Current statutes and regulations prohibit an occupational therapy practitioner from representing to the public that they are an occupational therapy practitioner unless they are licensed to provide services. The regulations will establish that an occupational therapy practitioner who holds a retired license may identify himself or herself as an occupational therapist or occupational therapy assistant as long as they clearly specify they are retired.

The regulations will establish that in the event the holder of a retired license wants to reactivate the license to active status (presumably so they could practice) the licensee shall only pay a single biennial renewal fee and not be required to pay all back accrued renewal fees. The regulations will require a licensee to complete 24 professional development units (PDUs) prior to reactivation for a license that has been on retired status for five years or less, which mirrors the requirement for a licensee who has allowed their license to lapse. The regulations will require a licensee whose license has been on retired status for more than five years, must complete 40 PDUs prior to reactivation of a license, which is consistent with BPC 2570.14(a) and CCR Section 4161(g), regarding individuals applying for a license who have not practiced in five years .

The regulation will also establish that a licensee may only be granted retirement status on two occasions to reduce the possibility that a practitioner may misuse this authority to otherwise circumvent renewal fees for active and inactive licenses.

4. Add new language, amend, and delete language in Section 4130 regarding Fees

The proposed language establishes a \$50 application fee, increases the (prorated) initial license fee from \$150 to \$170 and adds language spelling out the fee, adds language spelling out the fee for a limited permit, sets forth the current \$150 biennial renewal fee shall remain in effect for licenses that expire before January 1, 2014, increases the biennial renewal fee from \$150 to \$170 for licenses that expires on or after January 1, 2014, increases the fee for an inactive license from \$25 to \$50, and adds new language establishing a \$25 fee for an application for retired status.

Factual Basis/Rationale:

The Board is a Special Fund agency, which means that it doesn't rely on General Fund monies for its operation. As a Special Fund agency, revenue collected supports the Board's operations and, thus, the Board should be self-supporting. The purpose of the proposed

regulations is to establish new fees for the processing of applications for licensure and retired status and increase fees for the renewal of active and inactive licenses to increase revenue.

Current budget projections indicate that if the Board spends its entire budget in fiscal year 2012-13, there will be insufficient funds to support operations for the duration of fiscal year 2013-14. Without sufficient funding levels, the Board cannot perform its consumer-protection mandate or continue operations; it would be irresponsible to not increase fees when a *negative* fund reserve is projected. Thus, it is necessary and fiscally prudent to both reduce expenditures and increase fees. While the Board has consistently underspent its budget, an increase in fees is necessary for the Board to collect sufficient revenue to off-set the increased enforcement expenditures; the Board's fiscal goal is to be revenue "neutral" so it can continue its mandated regulatory and enforcement functions and support its administrative and licensing functions.

BUSINESS IMPACT

The proposed amendment to rename Article 3, establish a new Article 3.5, and renumber Section 4122 to Section 4127 will have no cost impact to businesses as the amendments are merely administrative in nature.

The proposed establishment of Section 4128 for placing a license on retired status would have no cost impact to businesses or employers due to the fact that the fee would be payable by a licensee who wished to place their license on retired status.

Amendment of Section 4130 specific to the establishment of charging a fee for the processing of an application for licensure and small increases to the initial license and renewal fees may have a cost impact to those businesses or employers that pay for or reimburse a practitioner's application and/or renewal fees. The Board does track nor monitor those employers that pay or reimburse employees their renewal fees. Thus, the Board does not have statistical data to estimate the cost impact.

ECONOMIC IMPACT ASSESSMENT – Government Code section 11346.3(b)

Creation or Elimination of Jobs in California

The proposed regulatory action seeks to implement statute and create a retired license status for occupational therapy practitioners, establish a \$50 fee for processing the application for licensure, increase the initial licensing fee and biennial renewal fees by \$20, and increase the inactive renewal fee. The Board does not anticipate the proposed regulatory action will either create or eliminate jobs within the State of California. Individuals who seek authorization to provide services within a regulated profession are accustomed to paying fees to fund a regulatory entity.

Creation or Elimination of Existing Businesses Within the State of California

The Board has determined the proposed regulatory action will not create new businesses or result in the elimination of existing businesses within the State of California. The proposed establishment of an application fee and small increases to biennial license and renewal fees directly impacts individuals applying for licensure or who hold a license issued by the Board. The Board is aware that in some cases businesses may pay for professional licensing fees of their employees, which is not required, but may be done at their discretion.

Expansion of Business of Existing Business Within the State of California

The Board has determined the proposed regulatory action will not result in expansion of any businesses currently doing business within the State of California.

Benefits of the Regulations

The proposed regulatory action will ensure the Board remains fiscally solvent to carry out its mission in regulating the practice of occupational therapy and protecting the health, safety, and welfare of California consumers.

UNDERLYING DATA

Table A: Review of application fees and renewal fees charged by other California healing arts Boards.

Table B: Data supporting the proposed fee for processing an Application for Licensure.

SPECIFIED 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 and businesses than the proposed regulation.