

## **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 February 3, 2014.

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 January 20, 2014.

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 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 Therapists. 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

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:

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2005 Evergreen Street, Suite 2050  
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(916) 263-2294 (Tel)  
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The backup contact person is:

Heather Martin  
California Board of Occupational Therapy  
2005 Evergreen Street, Suite 2050  
Sacramento, CA 95815  
(916) 263-2294 (Tel)  
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**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**  
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~~ a limited permit issued by the board, or is practicing on a license issued by another state pursuant to section 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's services shall reflect an understanding of how those services can be affected by socio-economic factors such as economic status, age, ethnicity, race, disability, marital status, sexual orientation, gender, gender identity, religion, residence, culture, political affiliation, and insurance coverage.

(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, supervisor, or employer 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, whether consensual or nonconsensual, with any recipient of service, including family or significant other, student, research participant, or employee, and

(B) 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 potential risks and outcomes.

(3) Occupational therapy practitioners shall respect the client's right to refuse 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.

# CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

## 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 16 CCR Section 4170 titled 'Ethical Standards of Practice,' and 16 CCR Section 4175 titled 'Minimum Standards for Infection Control' are incorporated under this Article. A pending regulatory action (2013-1119-04S) regarding 16 CCR Section 4172 pertaining to 'Standards of Practice for Telehealth,' if approved by the Office of Administrative Law, will also be incorporated into this Article.

Thus the existing title is too specific and not representative of all language that is, and potentially might be, incorporated into the Article. The proposed new title "Service Delivery Standards" is broader than the existing title and describes the various standards affecting practice that are incorporated under this Article. The proposed action promotes clarity.

#### **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 “licensed” as opposed to “certified” (SB 821, Committee on Business, Professions and Economic Development, Chapter 307, Statutes 2009); 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 Section 2570.4 and Title 16 CCR Section 4116.

### **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 clarify that practitioners must take into account various factors, when providing services and 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 also applies 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, supervisor, or employer, and within six (6) months of termination of occupational therapy services, practitioners must avoid relationships which may include emotional, physical, psychological, financial, or social relationships that interfere with professional judgment and objectivity.

The Board is seeking this amendment because existing language would benefit by clarifying the various roles and types of relationships or activities that would fall within the meaning and intent of this section. The Board believes it is necessary to establish a time period, in this case six (6) months, from when a professional relationship terminates to when it would be allowable by parties to explore or pursue a prohibited relationship without committing a violation this section.

The Board is proposing further modification to 16 CCR Section 4170(b)(2) by adding additional subsections (A) and (B) pertaining to sexual relationships and bartering for services. Proposed Section 16 CCR 4170(b)(2)(A) would establish and clarify that it is an ethical violation to enter into a sexual relationship (either consensual or nonconsensual) with any recipient of services, any family member or significant other of the recipient of services, any student, any research participant, or any employee. Proposed 16 CCR Section 4170(b)(2)(B) would establish and clarify that it is an ethical violation for bartering for services or any relationship established as an occupational therapy practitioner to further one's own interests at the expense of, or exploitation of, or in a conflict of interest, with the recipient of services.

The Board is seeking these amendments because regulations make no specific reference to sexual relationships or sexual bartering for services. 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.

### **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 eliminate existing 16 CCR Section 4170(d)(1), "Occupational therapy practitioners shall hold appropriate credentials for the services they provide" and moves it to a new section, Section 4170(h)(1). This amendment will also deleting reference to 16 CCR Section 4170(d)(2) but maintains the language in Section 4170(d). The Board is amending 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 16 CCR 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 practice areas. This will result in better and safer services provided 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 16 CCR 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 occupational therapy practitioner that they believe violates any law or regulation administered by the Board or is illegal. The reporting practitioner is also responsible for cooperating 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.

{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 16 CCR Section 4170(g) establishing “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 enhance 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 new language in 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 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 provide clarification to practitioners that practicing on an expired license is a violation of law; just because they have been issued a license, does not mean they are authorized to provide services once the license expires. Practitioners should not provide services unless they possess the level of knowledge, skill, and ability (e.g., education and experience) consistent with best practices and regard for client safety. 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) but maintains and integrates the language "and shall accurately represent their credentials, qualifications, education, experience, training, and competence" into 16 CCR 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(I)**

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.

#### 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.

### 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.