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

Draft regulatory language is attached for review.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Specific Language

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

Modifications are shown by ~~double strikeout~~ for deleted text and double underline for new modified language.

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

§ 4170. Ethical Standards of Practice

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

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

(1) Occupational therapy practitioners shall provide services that reflect an understanding of how services can be affected by factors such as economic, status, age, ethnicity, race, geography, disability, marital status, sexual orientation, gender, gender identity, religion, culture and political affiliation and insurance coverage.

(2) Occupational therapy practitioners shall consider offering pro bono ("for the good") or reduced-fee occupational therapy services for selected individuals when consistent with guidelines of the employer, third-party payer, or government agency.

(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 avoid relationships or activities which may include emotional, physical, psychological, financial, social or any other manner, 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, while a relationship exists as an occupational therapy practitioner, educator, researcher, supervisor, or employer, within 12 months of the termination of the relationship.

(B) Bartering for services or any relationship established as an occupational therapist or occupational therapy assistant 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 not use substances, including but not limited to, controlled substances, mood altering substances, or other medications or alcohol to the extent that practice is impaired or a threat to the health or safety of themselves or others.

~~(c)~~ (d) 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 receiving services via telehealth or 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 ~~professional~~ services, including services delivered via telehealth, 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)~~ (e) 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 be done in collaboration with the client.
(f) Occupational therapy practitioners shall timely complete professional development units required for license renewal and assure competence with respect to current practice and technology.
(g) Occupational therapy practitioners shall report to the appropriate authorities any acts that appear unethical or illegal in practice, education, research, billing, and documentation, and shall cooperate with the Board by providing information, documentation, declarations, or assistance as may be required.
~~(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, and appropriate national, state, or other requisite credentials for the services they provide;
(2) Practice occupational therapy within each practitioner's level of competence and scope of practice; and
(3) Provide appropriate supervision of individuals in accordance with local, state and federal laws regulations and organization policies, procedures, standards and guidelines.
~~(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 or participating 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.
~~(h)~~ (m) These regulations incorporate some standards set forth ~~Occupational Therapy practitioners shall abide by the standards set forth~~ in the American Occupational Therapy Association's "Occupational Therapy Code of Ethics and Ethics Standards" (2010)~~, incorporated herein by reference~~.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code section 2570.20.

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO ADD TITLE 16, CCR SECTION 4172, STANDARDS OF PRACTICE FOR TELEHEALTH.

Draft regulatory language is attached for review.

California Board of Occupational Therapy
Department of Consumer Affairs

Title 16. Division 39, California Code of Regulations

PROPOSED LANGUAGE

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

Modifications are shown by ~~double strikeout~~ for deleted text and double underline for new modified language.

ARTICLE 8. Ethical Standards of Practice

Add section 4172 - Standards of Practice for Telehealth

§ 4172. Standards of Practice for Telehealth.

(a) In order to provide occupational therapy services via telehealth as defined in Section 2290.5 of the Code, an occupational therapist or occupational therapy assistant ~~in this State or~~ providing services to a patient or client in this State must have a valid and current license issued by the Board.

~~(b) An occupational therapist or occupational therapy assistant must exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services.~~

~~(c)~~ (b) An occupational therapist shall obtain informed consent from the patient or client prior to delivering occupational therapy services via telehealth~~, and shall include~~. D~~d~~ocumentation of that consent statement and a consent for release of records shall be maintained in the patient's or client's health record.

(c) All records, including but not limited to, patient consent statements, medical, billing, and employee records, must be provided to the Board upon request.

(d) Prior to providing occupational therapy services via telehealth~~,~~ :

(1) an occupational therapist shall determine~~:~~ ~~(1)~~ whether an in-person evaluation is necessary~~;~~ and a local therapist must be available should an onsite visit be required;

(2) an occupational therapist shall determine whether in-person interventions are necessary. If it is determined in-person interventions are necessary, an on-site occupational therapist or occupational therapy assistant shall provide the appropriate interventions.

(e) ~~The obligations of an occupational therapist continue during the course of treatment to determine whether an in-person evaluation or intervention is necessary.~~ In making the~~se~~ determination~~s~~ whether an in-person evaluation or in-person interventions are necessary, an occupational therapist shall consider: the complexity of the patient's/client's condition; his or her own knowledge, skills, and abilities; the nature and complexity of the intervention; the requirements of the practice setting; and the patient's/client's context and environment. The obligations of an occupational therapist to determine whether an in-person evaluation or intervention is necessary continue during the course of treatment.

~~(e)~~ (f) An occupational therapist or occupational therapy assistant providing occupational therapy services via telehealth must:

(1) Exercise the same standard of care when providing occupational therapy services via telehealth as with any other mode of delivery of occupational therapy services;

~~(1)~~ (2) Provide services consistent with ~~the practice of occupational therapy as defined in~~ section 2570.2(k) of the Code; and

~~(2)~~ (3) Comply with all other provisions of the Occupational Therapy Practice Act and its attending regulations, including the ethical standards of practice set forth in section 4170, as well as any other applicable provisions of law.

(g) Failure to comply with these regulations shall be considered unprofessional conduct as set forth in the Occupational Therapy Practice Act.

Note: Authority Cited: Business and Professions Code section 2570.20. Reference: Business and Professions Code sections 2290.5 and 2570.20.

CONSIDERATION OF APPROVAL TO NOTICE PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTIONS:

- **4110, APPLICATION,**
- **4112, REVIEW OF APPLICATION,**
- **4120, RENEWAL OF LICENSE OR CERTIFICATE,**
- **4121, RENEWAL OF EXPIRED LICENSE OR CERTIFICATE, APPLICATION, FEES; EFFECTIVE DATE OF RENEWAL,**
- **4123, LIMITED PERMIT, AND**
- **4127, INACTIVE LICENSE.**

The following are attached for review:

- Draft regulatory language,
- Assembly Bill (AB) 1588, Atkins, Professions & vocations: reservist licensees: fees and continuing education – effective January 1, 2013, and
- AB 1904, Block, Professions & vocations: military spouses: expedited licensure – effective January 1, 2013.

Informational only

- New bill: AB 186, Maienschein, Professions & Vocations: military spouses: temporary licenses.

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 4110, Article 2, is amended to read as follows:

§ 4110. Application

(a) An application for a license~~, certificate,~~ or limited permit shall be submitted on the form entitled Initial Application for Licensure, Form LicApp, Rev. 1/2013), hereby incorporated by reference, and shall contain the information required by sections 30, 144, 851, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16 of the Code and Family Code section 17520, accompanied by the appropriate fees.
(b) For an applicant applying for licensure pursuant to section 2570.15 of the Code, "substantially equal" means that the applicant has successfully completed the academic requirements of an educational program, including the educational program and supervised fieldwork requirements, for an occupational therapist or an occupational therapy assistant that are approved by the board and approved by the foreign credentialing review process of the National Board of Certification in Occupational Therapy ~~(NBCOT)~~, the American Occupational Therapy Certification Board, or the American Occupational Therapy Association.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 30, 144, 850, 851, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, 2570.15 and 2570.16, Business and Professions Code; and Section 17520, Family Code.

b. Section 4112, Article 2, is amended to read as follows:

§ 4112. Review of Application

(a) Within thirty (30) days after receipt of an application for a license~~, certificate,~~ or limited permit, the board shall inform the applicant, in writing, whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.
(b) Within ten (10) days after receipt of an application for a license submitted by an applicant that is:
(1) Married to, or in a domestic partnership or other legal union with an active duty member of the military who is assigned to a duty station in California, and
(2) Holds a current, unrestricted, occupational therapist or occupational therapy assistant license, certificate or registration issued by another state, district, or territory of the United States,

the board shall inform the applicant, in writing, whether the application is complete and accepted for filing or that it is deficient and what specific information or documentation is required to complete the application.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 115.5, 144, 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14, and 2570.16, Business and Professions Code and Section 15376, Government Code.

c. Section 4120, Article 3, is amended to read as follows:

§ 4120. Renewal of License ~~or Certificate~~ – Forms

(a) The term of a license ~~or certificate~~ shall be two years.
(1) Unless renewed, a license ~~or certificate~~ issued by the board shall expire at 12 midnight on the last day of the holder's birth month during an odd year if the licensee was born in an odd year or during an even year, if the licensee was born in an even year. The initial license fee shall be prorated from the month of issuance based on the holder's birth month and birth year.
(2) To renew an unexpired license ~~or certificate~~, the holder shall, before the time at which the license ~~or certificate~~ would otherwise expire, apply for renewal, pay the renewal fee, and certify that the licensee's ~~or certificate holder's~~ representations on the renewal form are true, correct, and contain no material omissions of fact, signed under penalty of perjury.
(3) The renewal application shall include a statement specifying whether the licensee ~~or certificate holder~~ was convicted of a crime or disciplined by another public agency during the preceding renewal period, and whether the continuing competency requirements have been met if renewing in an active status.
(4) For a license ~~or certificate~~ that expires on or after July 1, 2010, as a condition of renewal, an applicant for renewal not previously fingerprinted by the board, or for whom a record of the submission of fingerprints no longer exists, is required to furnish to the Department of Justice, as directed by the board, a full set of fingerprints for the purpose of conducting a criminal history record check and to undergo a state and federal level criminal offender record information search conducted through the Department of Justice. Failure to submit a full set of fingerprints to the Department of Justice on or before the date required for renewal of a license ~~or certificate~~ is grounds for discipline by the board. It shall be certified on the renewal form whether the fingerprints have been submitted. This requirement is waived if the license ~~or certificate~~ is renewed in an inactive status, or the licensee or certificate holder is actively serving in the military outside the country.
(5) An inactive license ~~or certificate~~ may be renewed.
(6) Failure to provide all of the information required by this section renders any application for renewal incomplete and not eligible for renewal.
(b) A limited permit cannot be renewed.
(c) Licensees who possess a current and valid license and who are called to active duty as a member of the United States Armed Forces or the California National Guard do not have to:

(1) Pay the renewal fee set forth in section 4130; or
(2) Complete the continuing competency requirements set forth in section 4161. These requirements are waived only during the period in which the licensee is on active duty service.
(d) Licensees may not engage in the practice of occupational therapy during the period of active duty service and renewal waiver unless he or she wishes to practice, at which time the licensee shall request the license be placed on military active status. A licensee whose license is on military active status may practice occupational therapy but shall not engage in private practice.
(e) Licensees who are on active duty service must notify the board, in writing, within 60 days of his or her notice of discharge.
(f) In order to activate their license, the licensee must meet all necessary renewal requirements within six (6) months from the licensee's discharge from active duty service, including the requirements of sections 4130 and 4161.

Note: Authority cited: Sections 134, 152.6, 462, and 2570.20, Business and Professions Code. Reference: Sections 114.3, 134, 152.6, 462, 2570.5, 2570.9, 2570.10, and 2570.11, Business and Professions Code.

d. Section 4121, Article 3, is amended to read as follows:

§ 4121. Renewal of Expired License ~~or Certificate~~; Application; Fees; Effective Date of Renewal

(a) Except as otherwise provide in the Code, a license ~~or certificate~~ which has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the board, and payment of all accrued and unpaid renewal fees. If a license ~~or certificate~~ is renewed after its expiration, the licensee ~~or certificate holder~~, as a condition precedent to renewal, shall also pay a delinquency fee. Renewal under this section shall be effective on the date on which the application is ~~filed~~ received by the Board, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license ~~or certificate~~ shall continue in effect through the expiration date provided in section 4120 above which next occurs after the effective date of renewal, when it shall expire if it is not renewed.
(b) This section shall not apply to licensees who are on active duty service as a member of the United States Armed Forces or the California National Guard.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 114.3, 163.5, 2570.9, and 2570.10, Business and Professions Code.

e. Section 4123, Article 3, is amended to read as follows:

§ 4123. Limited Permit

(a) To qualify for a limited permit, a person must have applied to the National Board for Certification in Occupational Therapy (NBCOT) to take the licensing examination within four (4) months of completing the education and fieldwork requirements for licensure or certification and request NBCOT provide their examination score report be forwarded to the Board.
(1) Upon receipt from NBCOT, the applicant must forward to the Board a copy of the Authorization to Test (ATT) letter.
(2) The applicant must provide documentation or other evidence to the Board, to prove that the applicant requested their examination score be sent from NBCOT to the Board, before a limited permit may be issued.
(3) A limited permit shall only be valid for three (3) months from the date of issuance by the Board, upon receipt of a failing result, or two (2) weeks following the expiration of the applicants' eligibility to test period, whichever occurs first.
(4) The limited permit holder must immediately notify the Board of the results of the examination.
(5) The limited permit holder must provide to the Board the name, address and telephone number of his or her employer and the name and license number of his or her supervising occupational therapist (OT). Any change of employer or supervising OT must be provided to the Board, in writing, within ~~10~~ five (5) days of the change.
(b) A limited permit shall not be denied to an applicant that has completed the fingerprint, education, and examination requirements, yet is unable to provide transcripts due to the college or university's inability to make the transcripts available to the student or the Board in a timely manner. A limited permit issued pursuant to this section shall only be valid for three (3) months from the date of issuance by the Board.
~~(b)~~ (c) The limited permit will be cancelled, and the fee forfeited, upon notification to the Board or the limited permit holder by the test administrator that the holder failed to pass the first examination.

Note: Authority cited: Sections 2570.5 and 2570.20, Business and Professions Code. Reference: Sections 2570.5, 2570.6, 2570.7, 2570.9, 2570.16 and 2570.26, Business and Professions Code; and Sections 4100, 4102, 4110, 4111, 4112, 4114, 4120 and 4130, California Code of Regulations.

f. Section 4127, Article 3.5, is amended to read as follows:

§ 4127. Inactive Status

Upon written request, the board may grant inactive status to a license ~~or certificate~~ holder under the following conditions:
(a) At the time of application for inactive status, the holder's license ~~or certificate~~ shall be current and not suspended, revoked, or otherwise punitively restricted by the board.

(b) The holder of an inactive license ~~or certificate~~ shall not engage in any activity for which a license ~~or certificate~~ is required.
(c) An inactive license ~~or certificate~~ shall be renewed during the same time period in which an active license or certificate is renewed. The holder of an inactive license ~~or certificate~~ need not comply with any continuing education requirement for renewal of an active license.
(d) The renewal fee for a license ~~or certificate~~ in an active status shall apply also for a renewal of a license ~~or certificate~~ in an inactive status, unless a lesser renewal fee is specified by the board.
(e) In order for the holder of an inactive license ~~or certificate~~ to restore his or her license ~~or certificate~~ to an active status, he or she shall comply with all of the following:
(1) Pay the renewal fee.
(2) ~~If the board requires completion of continuing education for renewal of an active license,~~ Provides proof of completion of ~~complete~~ continuing education equivalent to that required for a single renewal period of an active license, pursuant to Section 4161 ~~or certificate, unless a different requirement is specified by the board on a case-by-case basis~~.

Note: Authority cited: Sections 462, 700, 701, and 2570.20, Business and Professions Code. Reference: Sections 462, 700, 701, and 2570.11, Business and Professions Code.

Assembly Bill No. 1588

CHAPTER 742

An act to add Section 114.3 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 29, 2012. Filed with Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1588, Atkins. Professions and vocations: reservist licensees: fees and continuing education.

Existing law provides for the regulation of various professions and vocations by boards within the Department of Consumer Affairs and for the licensure or registration of individuals in that regard. Existing law authorizes any licensee whose license expired while he or she was on active duty as a member of the California National Guard or the United States Armed Forces to reinstate his or her license without examination or penalty if certain requirements are met.

This bill would require the boards described above, with certain exceptions, to waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, of any licensee or registrant who is called to active duty as a member of the United States Armed Forces or the California National Guard if certain requirements are met. The bill would, except as specified, prohibit a licensee or registrant from engaging in any activities requiring a license while a waiver is in effect. The bill would require a licensee or registrant to meet certain renewal requirements within a specified time period after being discharged from active duty service prior to engaging in any activity requiring a license. The bill would require a licensee or registrant to notify the board of his or her discharge from active duty within a specified time period.

The people of the State of California do enact as follows:

SECTION 1. Section 114.3 is added to the Business and Professions Code, to read:

114.3. (a) Notwithstanding any other provision of law, every board, as defined in Section 22, within the department shall waive the renewal fees, continuing education requirements, and other renewal requirements as determined by the board, if any are applicable, for any licensee or registrant called to active duty as a member of the United States Armed Forces or the California National Guard if all of the following requirements are met:

(1) The licensee or registrant possessed a current and valid license with the board at the time he or she was called to active duty.

(2) The renewal requirements are waived only for the period during which the licensee or registrant is on active duty service.

(3) Written documentation that substantiates the licensee or registrant's active duty service is provided to the board.

(b) (1) Except as specified in paragraph (2), the licensee or registrant shall not engage in any activities requiring a license during the period that the waivers provided by this section are in effect.

(2) If the licensee or registrant will provide services for which he or she is licensed while on active duty, the board shall convert the license status to military active and no private practice of any type shall be permitted.

(c) In order to engage in any activities for which he or she is licensed once discharged from active duty, the licensee or registrant shall meet all necessary renewal requirements as determined by the board within six months from the licensee's or registrant's date of discharge from active duty service.

(d) After a licensee or registrant receives notice of his or her discharge date, the licensee or registrant shall notify the board of his or her discharge from active duty within 60 days of receiving his or her notice of discharge.

(e) A board may adopt regulations to carry out the provisions of this section.

(f) This section shall not apply to any board that has a similar license renewal waiver process statutorily authorized for that board.

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Assembly Bill No. 1904

CHAPTER 399

An act to add Section 115.5 to the Business and Professions Code, relating to professions and vocations.

[Approved by Governor September 20, 2012. Filed with Secretary of State September 20, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1904, Block. Professions and vocations: military spouses: expedited licensure.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Existing law authorizes a licensee to reinstate an expired license without examination or penalty if, among other requirements, the license expired while the licensee was on active duty as a member of the California National Guard or the United States Armed Forces.

This bill would require a board within the department to expedite the licensure process for an applicant who holds a license in the same profession or vocation in another jurisdiction and is married to, or in a legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

The people of the State of California do enact as follows:

SECTION 1. Section 115.5 is added to the Business and Professions Code, to read:

115.5. (a) A board within the department shall expedite the licensure process for an applicant who meets both of the following requirements:

(1) Supplies evidence satisfactory to the board that the applicant is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in this state under official active duty military orders.

(2) Holds a current license in another state, district, or territory of the United States in the profession or vocation for which he or she seeks a license from the board.

(b) A board may adopt regulations necessary to administer this section.

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ASSEMBLY BILL No. 186

Introduced by Assembly Member Maienschein
(Principal coauthor: Assembly Member Hagman)

January 28, 2013

An act to amend Section 115.5 of the Business and Professions Code, relating to professions and vocations, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 186, as introduced, Maienschein. Professions and vocations: military spouses: temporary licenses.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law provides for the issuance of reciprocal licenses in certain fields where the applicant, among other requirements, has a license to practice within that field in another jurisdiction, as specified. Under existing law, licensing fees imposed by certain boards within the department are deposited in funds that are continuously appropriated. Existing law requires a board within the department to expedite the licensure process for an applicant who holds a current license in another jurisdiction in the same profession or vocation and who supplies satisfactory evidence of being married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forces of the United States who is assigned to a duty station in California under official active duty military orders.

This bill would authorize a board within the department to issue a provisional license to an applicant who qualifies for an expedited license

pursuant to the above-described provision. The bill would require the provisional license to expire after 18 months.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 115.5 of the Business and Professions
2 Code is amended to read:
3 115.5. (a) A board within the department shall expedite the
4 licensure process for an applicant who meets both of the following
5 requirements:
6 (1) Supplies evidence satisfactory to the board that the applicant
7 is married to, or in a domestic partnership or other legal union
8 with, an active duty member of the Armed Forces of the United
9 States who is assigned to a duty station in this state under official
10 active duty military orders.
11 (2) Holds a current license in another state, district, or territory
12 of the United States in the profession or vocation for which he or
13 she seeks a license from the board.
14 *(b) For each applicant who is eligible for an expedited license*
15 *pursuant to subdivision (a), the board may provide a provisional*
16 *license while the board processes the application for licensure.*
17 *The provisional license shall expire 18 months after issuance.*
18 ~~(b)~~
19 *(c)* A board may adopt regulations necessary to administer this
20 section.

O

CONSIDERATION OF APPROVAL TO NOTICE PROPOSED REGULATORY LANGUAGE TO AMEND TITLE 16, CCR SECTIONS:

- **4102, FILING OF ADDRESSES,**
- **4114, ABANDONMENT OF APPLICATION,**
- **4122, INACTIVE STATUS,**
- **4141, ASSESSMENT OF ADMINISTRATIVE FINES,**
- **4163, EXEMPTION FROM CONTINUING COMPETENCY REQUIREMENTS, AND**
- **4181, SUPERVISION PARAMETERS.**

Draft regulatory language is attached for review.

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 <u>underlined</u> for new text.

a. Section 4102, Article 1, is amended to read as follows:

§ 4102. Filing of Addresses.

(a) Each person licensed~~, certified~~ or issued a limited permit by the board, shall report to the board every change of residence address within 30 days after the change, giving both the old and new addresses. In addition to the residence address, the person may provide the board with an alternate address of record. If an alternate address is the person's address of record, he or she may request, in writing, that the residence address not be disclosed to the public.
(b) Each person licensed~~, certified~~ or issued a limited permit by the board shall report to the board every change of name within 30 days after the change, giving both the old and new names.
(c) This section refers to every person who holds an active, inactive, unexpired, suspended license ~~or certificate,~~ or a limited permit.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 136, 2570 (original), 2570.3, 2570.5, 2570.8, 2570.9, 2570.10 and 2570.11, Business and Professions Code.

b. Section 4114, Article 2, is amended to read as follows:

§ 4114. Abandonment of Application.

a) An application for a license ~~or certificate~~ shall be deemed abandoned and the application fee forfeited when:
(1) The applicant fails to complete the application within two years after it is originally received by the board.
(2) The applicant fails to submit the initial license ~~or certification~~ fee within sixty (60) days after the date of notification of eligibility by the board.
(b) An application for a limited permit shall be deemed abandoned and the application fee forfeited if the applicant fails to complete the application or submit the required fee within sixty (60) days after it is originally received by the board.
(c) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.5, 2570.6, 2570.7, 2570.8, 2570.9, 2570.14 and 2570.16, Business and Professions Code.

c. Section 4122, Article 3, is amended to read as follows:

4122. Inactive Status.

Upon written request, the board may grant inactive status to a license ~~or certificate~~ holder under the following conditions:
(a) At the time of application for inactive status, the holder's license ~~or certificate~~ shall be current and not suspended, revoked, or otherwise punitively restricted by the board.
(b) The holder of an inactive license ~~or certificate~~ shall not engage in any activity for which a license ~~or certificate~~ is required.
(c) An inactive license ~~or certificate~~ shall be renewed during the same time period in which an active license ~~or certificate~~ is renewed. The holder of an inactive license ~~or certificate~~ need not comply with any continuing education requirement for renewal of an active license.
(d) The renewal fee for a license ~~or certificate~~ in an active status shall apply also for a renewal of a license ~~or certificate~~ in an inactive status, unless a lesser renewal fee is specified by the board.
(e) In order for the holder of an inactive license ~~or certificate~~ to restore his or her license ~~or certificate~~ to an active status, he or she shall comply with all of the following:
(1) Pay the renewal fee.
(2) If the board requires completion of continuing education for renewal of an active license, complete continuing education equivalent to that required for a single renewal period of an active license~~ or certificate, unless a different requirement is specified by the board on a case-by-case basis~~.

Note: Authority cited: Sections 462, 700, 701 and 2570.20, Business and Professions Code. Reference: Sections 462, 700, 701 and 2570.11, Business and Professions Code.

d. Section 4141, Article 5, is amended to read as follows:

§ 4141. Assessment of Administrative Fines.

(a) Where citations include an assessment of an administrative fine, the fine shall be not less than $50 or exceed $5,000 for each violation. Each violation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:
(1) Class "A" violations shall not be less than $1,001 nor more than $5,000. Class "A" violations are violations that the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class "A" violations are more serious in nature and may include, but are not limited to, violations which resulted in or had significant potential for patient harm and where there is no evidence that revocation or other disciplinary action is required to ensure public safety. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when

the aide performed a client related task that resulted in harm to the patient, or failing to provide adequate supervision to an occupational therapy assistant that resulted in harm to the patient, or fraudulent medical billing, or practicing without a current and active license for more than one year, or functioning autonomously as an occupational therapy assistant. A Class "A" violation may be issued to a person who has committed a class "B" violation who has had two or more prior, separate class "B' violations.

(2) Class "B" violations shall not be less than $501 nor more than $2,500. Class "B" violations are violations that the executive officer, or his or her designee, has determined involve a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the Occupational Therapy Practice Act. Class "B" violations are less serious in nature and may include, but are not limited to, violations which could have resulted in patient harm. Typically some degree of mitigation will exist. Such violations include, but are not limited to, failing to provide direct in-sight supervision of an aide when the aide performed a client related task that did not result in harm to a patient, or failure to provide adequate supervision to an occupational therapy assistant, limited permit holder, student, or occupational therapy aid, resulting in no patient harm, or providing advanced practice services without board approval, or practicing when the license has been expired or inactive for a period of more than three months but less than one year, or supervising more occupational therapy assistants than allowed by law. A class "B" violation may be issued to a person who has committed a class "C" violation who has two or more prior, separate class "C" violations.

(3) Class "C" violations shall not be less than $50 nor more than $1,000. Class "C" violations are violations that the executive officer, or his or her designee, has determined involve a person who has violated a statute or regulation relating to the practice of occupational therapy. A class "C" violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care. Such violations may include, but are not limited to, practicing when the license has been expired or inactive for a period of three months or less, failing to disclose a conviction or convictions in the application process, or failing to provide a patient or client or the guardian of a patient or client access to their medical records pursuant to Health and Safety Code Section 123110. A class "C" violation may also be issued to a licensee ~~or certificate~~ holder who fails to respond to a written request by the board for additional information relating to a renewal application.

(4) Class "D" violations shall not be less than $50 nor more than $250. Class "D" violations occur when the executive officer, or his or her designee, has determined that an applicant~~,~~ or licensee~~, or certificate holder~~ has failed to provide a change of address within 30 days as required by Section 4102. A class "D" violation is a minor technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care.

(b) In determining the amount of an administrative fine, the executive officer, or his or her designee, shall consider the following factors:

(1) Gravity of the violation,

(2) History of previous violations involving the same or similar conduct,

(3) Length of time that has passed since the date of the violation,

(4) Consequences of the violation, including potential for patient harm,

(5) The good or bad faith exhibited by the cited individual,

(6) Evidence that the violation was willful,

(7) The extent to which the individual cooperated with the board's investigation,

(8) The extent to which the individual has remediated any knowledge and/or skills deficiencies,
(9) Any other mitigating or aggravating factors.
(c) In his or her discretion, the executive officer, or his or her designee, may issue an order of abatement without levying a fine for the first violation of any provision set forth in subsection (a).
(d) The executive officer, or his or her designee, may assess a fine which shall not exceed five thousand dollars ($5,000) for each violation if the violation involves fraudulent billing.

Note: Authority cited: Sections 125.9, 148 and 2570.20, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

e. Section 4163, Article 7, is amended to read as follows:

§ 4163. Exemption from Continued Competency Requirements.

At the time of applying for renewal of a license ~~or certificate,~~ an occupational therapy practitioner may request an exemption from the continuing competency requirements. The renewal application must provide the following information:
(a) Evidence that during the renewal period prior to the expiration of the license ~~or certificate~~, the practitioner was residing in another country for one year or longer, reasonably preventing completion of the continuing competency requirements; or
(b) Evidence that the practitioner was absent from California because of military service for a period of one year or longer during the renewal period, preventing completion of the continuing competency requirements; or
(c) Evidence that the practitioner should be exempt from the continuing competency requirements for reasons of health or other good cause which include:
(1) Total physical and/or mental disability for one (1) year or more during the renewal period and the inability to work during this period has been verified by a licensed physician or surgeon or licensed clinical psychologist; or
(2) Total physical and/or mental disability for one (1) year or longer of an immediate family member for whom the practitioner had total responsibility, as verified by a licensed physician or surgeon or licensed clinical psychologist.

Note: Authority cited: Sections 2570.10 and 2570.20, Business and Professions Code. Reference: Sections 2570.10 and 2570.11, Business and Professions Code.

f. Section 4181, Article 9, is amended to read as follows:

§ 4181. Supervision Parameters.

(a) Appropriate supervision of an occupational therapy assistant includes, at a minimum:
(1) The weekly review of the occupational therapy plan and implementation and periodic onsite review by the supervising occupational therapist. The weekly review shall encompass all aspects of occupational therapy services and be completed by telecommunication or onsite.

(2) Documentation of the supervision, which shall include either documentation of direct client care by the supervising occupational therapist, documentation of review of the client's medical and/or treatment record and the occupational therapy services provided by the occupational therapy assistant, or co-signature of the occupational therapy assistant's documentation.
(3) The supervising occupational therapist shall be readily available in person or by telecommunication to the occupational therapy assistant at all times while the occupational therapy assistant is providing occupational therapy services.
(4) The supervising occupational therapist shall provide periodic on-site supervision and observation of client care rendered by the occupational therapy assistant.
(b) The supervising occupational therapist shall at all times be responsible for all occupational therapy services provided by an occupational therapy assistant, a limited permit holder, a student or an aide. The supervising occupational therapist has continuing responsibility to follow the progress of each client, provide direct care to the client, and assure that the occupational therapy assistant, limited permit holder, student or aide do not function autonomously.
(c) The level of supervision for all personnel is determined by the supervising occupational therapist whose responsibility it is to ensure that the amount, degree, and pattern of supervision are consistent with the knowledge, skill and ability of the person being supervised.
(d) Occupational therapy assistants may supervise:
(1) Level I occupational therapy students;
(2) Level I and Level II occupational therapy assistant students; and
(3) Aides providing non-client related tasks.
(e) The supervising occupational therapist shall determine that the occupational therapy practitioner possesses a current license~~, certificate~~ or permit to practice occupational therapy prior to allowing the person to provide occupational therapy services.

Note: Authority cited: Sections 2570.13 and 2570.20, Business and Professions Code. Reference: Sections 2570.2, 2570.3, 2570.4, 2570.5, 2570.6 and 2570.13, Business and Professions Code.

REPORT ON PENDING REGULATIONS:

The Regulations Update report is attached for review:

REGULATIONS UPDATE REPORT

Pending Rulemaking files: In-Process

Rulemaking File Subject	Sec.	Status	Close of public comment period	Date Pkg Sent to DCA	Date Pkg Rtn'd from DCA	Final Pkg Due to OAL	Actual Submit Date To OAL	Date language goes into effect
Definitions and Supervision Plan for an Occupational Therapist	4180, 4184, 4187	Package submitted to DCA 10/2/2012; awaiting approval by DCA, SCSA, and DOF. DCA granted 90-day extension. New deadline to submit to OAL: ***01/10/13.***	11/14/2011 01/03/2012 05/22/2012	10/11/2012	01/07/13	10/13/2012 *Extension: 1/10/2013*	01/08/13	04/01/2013
Retired Status and Fees	4128, 4130	Language published August 24, 2012; adopted at October 2012 meeting.	10/08/2012	12/27/2012		08/14/2013		
Post-Professional Education and Training (Instructor Qualifications)	4154	Language published August 24, 2012; adopted at October 2012 meeting.	10/08/2012	01/10/13		08/14/2013		
Ethical Standards of Practice	4170	Language published August 24, 2012, and discussed at October 2012 meeting. Modified text to be considered at February 2013 meeting.	10/08/2012			08/14/2013		
Standards of Practice for Telehealth	4172	Language published August 24, 2012, and discussed at October 2012 meeting. Modified text to be considered at February 2013 meeting.	10/08/2012			08/14/2013		

REGULATIONS UPDATE REPORT

Pending Regulatory Amendments: Process Not Yet Started

Rulemaking File Subject	Section	Priority	Status	Close of public comment period	Date Pkg Sent to DCA	Date Pkg Rtn'd from DCA	Final Pkg Due to OAL	Actual Submit Date To OAL	Date language goes into effect
Disciplinary Guidelines & Uniform Standards	4101, 4146.5 4147, 4147.5		Language previously approved by Board; to be published in March and considered by Board at May 2013 meeting.						
Limited Permit	4123		Language previously approved by Board; to be published in March and considered by Board at May 2013 meeting.						
License renewal	4120, 4121		Language to be published and considered by Board at August 2013 meeting.						
Continuing Competency	4161		Language to be published and considered by Board at May 2013 meeting.						
Notification to Consumers	4171		Language to be published and considered by Board at May 2013 meeting.						
Language for OT to request to supervise more than 2 OTAs	tbd		Implement BPC 2570.3(j)(2). Practice Committee to review; draft language to be presented to the Board at August meeting.						

DISCUSSION AND CONSIDERATION OF DELEGATING AUTHORITY TO EXECUTIVE OFFICER TO PROMULGATE TECHNICAL, NON-SUBSTANTIVE REGULATORY AMENDMENTS PURSUANT TO TITLE 1, CCR SECTION 100, PUBLICATION OF "CHANGES WITHOUT REGULATORY EFFECT."

The following are attached for review:

- Page 43 from DCA's rulemaking manual
- Title 1, CCR Section 100 language

XIV. SECTION 100 CHANGES

OAL provides a simple procedure for "changes without regulatory effect or changes also known as "Section 100 changes." 1 CCR 100.

You may only use the simple Section 100 process if the change you are proposing does not materially change any requirement, right, responsibility, or any other regulatory element of any regulation. Section 100 changes generally would include changes to an agency's name or address; renumbering; or deleting a regulation for which all statutory or constitutional authority has been repealed or which has been invalidated by an appropriate court.

After legal review, a board may file § 100 changes directly with OAL. A bureau, on the other hand, must submit §100 changes to the Legal Office for review, and then submission to the Director for approval.

In submitting "changes without regulatory effect" to OAL, please note that you need to submit seven (7) copies of the Face Sheet (STD. 400) and the Language and one copy of the statement justifying why the change is nonsubstantive.

See Exhibit 17 (1 CCR 100) for the procedure to follow if you wish to make a change without regulatory effect.

OFFICE OF ADMINISTRATIVE LAW

Title 1, California Code of Regulations

§100. Publication of "Changes Without Regulatory Effect."

(a) Subject to the approval of OAL as provided in subsections (c) and (d), an agency may add to, revise or delete text published in the California Code of Regulations without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision. Subject to the approval of OAL, the Department of Social Services may add to, revise or delete text published in the department Manual of Policies and Procedures (MPP) without complying with the rulemaking procedure specified in Article 5 of the APA only if the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the MPP. The addition, revision or deletion is a "change without regulatory effect." Changes without regulatory effect include, but are not limited to:

(1) renumbering, reordering, or relocating a regulatory provision;

(2) deleting a regulatory provision for which all statutory or constitutional authority has been repealed;

(3) deleting a regulatory provision held invalid in a judgment that has become final, entered by a California court of competent jurisdiction, a United States District Court located in the State of California, the United States Court of Appeals for the Ninth Circuit, or the United States Supreme Court; however, OAL shall not approve any proposed change without regulatory effect if the change is based on a superior court decision which invalidated the regulatory provision solely on the grounds that the underlying statute was unconstitutional;

(4) revising structure, syntax, cross-reference, grammar, or punctuation;

(5) changing an "authority" or "reference" citation for a regulation; and,

(6) making a regulatory provision consistent with a changed California statute if both of the following conditions are met:

(A) the regulatory provision is inconsistent with and superseded by the changed statute, and

(B) the adopting agency has no discretion to adopt a change which differs in substance from the one chosen.

(b) In submitting a change without regulatory effect to OAL for review the agency shall:

(1) submit seven copies of the regulations with an addition shown in underline or italics and a deletion shown in strike-out; and

(2) attach to each copy a completed Form 400, with at least one Form 400 bearing an original signature; and

(3) submit a written statement explaining why the change does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of any California Code of Regulations provision.

(c) OAL shall determine whether a change submitted is a change without regulatory effect within 30 working days of its receipt. OAL shall send written notification of the determination to the agency which submitted the changes.

(d) If OAL determines that the submitted change is a change without regulatory effect, OAL shall file it with the Secretary of State and have it published in the California Code of Regulations. If the change without regulatory effect is a change to the MPP, OAL shall file the change with the Secretary of State and the Department of Social Services shall publish the change in the MPP.

NOTE: Authority cited: Sections 11342.4 and 11349.1(c), Government Code. Reference: Sections 11342.600, 11343.8, 11344.6 and 11346, Government Code; and Article III, Section 3.5, California Constitution.

(Amended 10/2002)