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

The following are attached for review:

- Notice
- Proposed text
- Initial Statement of Reasons

TITLE 16. CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

NOTICE IS HEREBY GIVEN that the California Board of Occupational Therapy (Board) is proposing to take the action described in the Informative Digest. Any person interested may submit statements or arguments relevant to the action proposed in writing. Written comments, including those sent by mail, facsimile, or email to the addresses listed under Contact Person in this Notice, must be received by the Board at its office not later than 5:00 pm on 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 CBOT. The request must be received in the Board 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 2570.2 and 2570.3, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST

Informative Digest

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

Policy Statement Overview

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

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

in Section 4155 and makes other minor formatting and renumbering edits to affect these amendments.

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

Benefit of Proposed Regulations

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

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

Consistency and Compatibility with Existing State Regulations

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

FISCAL IMPACT ESTIMATES

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

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

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact:

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

RESULTS OF ECONOMIC IMPACT ANALYSIS

Impact on Jobs/New Business:

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

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

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

Cost Impact on Affected Private Persons:

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

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

Effect on Housing Costs: None

Effect on Small Business:

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

CONSIDERATION OF ALTERNATIVES

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

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

TEXT OF PROPOSAL

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

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

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

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

CONTACT PERSON:

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

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

The backup contact person is:

Heather Martin
[Same contact information as above]

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

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

Proposed Text

Proposed amendments are shown underlined for new text.

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

§ 4151. Hand Therapy

(a) Hand therapy services may be performed only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that he or she has met the post professional education and training requirements established by this section as follows:
(1) Education: Completion of 45 contact hours in the subjects listed in Code section 2570.3(e), including 30 hours specifically relating to the hand, wrist, and forearm.
(2) Training: Completion of 480 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to hand therapy.
(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.
(c) An occupational therapist providing hand therapy services using physical agent modalities must also comply with the requirements of section 4152. A maximum of 8 contact hours and 60 hours of supervised on-the-job training, clinical internship or affiliation, paid or voluntary, completed under section 4152 will be credited toward the requirements of this section.
~~(c)~~ (d) An occupational therapist may provide only those hand therapy services he or she is competent to perform.

Note: Authority cited: Sections 2570.3 and 2570.20, Business and Professions Code.
Reference: Sections 2570.2 and 2570.3, Business and Professions Code.

§ 4152. Physical Agent Modalities

(a) Physical agent modalities may be used only when an occupational therapist has demonstrated to the Board in an application filed pursuant to section 4155 that he or she has met the post professional education and training requirements established by this section as follows:
(1) Education: Completion of 30 contact hours in the subjects listed in Code section 2570.3(f).
(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to physical agent modalities.
(b) An occupational therapist whose application pursuant to section 4155 provides proof of current certification as a Certified Hand Therapist, issued by the Hand Therapy Certification Commission, shall be deemed to have met the education and training requirements established by this section.
(c) An occupational therapist may use only those physical agent modalities he or she is competent to use.

Note: Authority Cited: Sections 2570.3 and 2570.20, Business and Professions Code.
Reference: Sections 2570.2 and 2570.3, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

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

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

Introduction

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

Purpose

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

Factual Basis/Rationale

Amend 16 CCR Section 4151

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

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

The benefit of this proposed action is that it promotes access and reduces barriers for qualified and competent therapists to provide hand therapy services. In order for an occupational therapist to obtain certification as "CHT" they are required to complete a minimum of 4,000 hours of direct practice in hand therapy and pass a rigorous competency-based examination.

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

Amend 16 CCR Section 4152

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

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

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

BUSINESS IMPACT:

This regulation will not have an adverse economic impact on business. Existing regulations require occupational therapists that provide advanced practice services to

complete education and training and obtain Board approval. This proposed action will streamline the advanced practice application process for occupational therapists that are CHTs.

ECONOMIC IMPACT ANALYSIS

Background

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

Creation or Elimination of Jobs Within California

The Board has determined the proposed regulatory action will not create or eliminate jobs within California. This proposed action reduces existing barriers placed on occupational therapists that are a "Certified Hand Therapist" by streamlining The Board's application process and secure Board approval to deliver these services. This proposed action has the potential to make California more attractive State to deliver services.

Creation of New Business or Elimination of Existing Business Within California

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

Expansion of Business Within California

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

Benefits of Regulations

This proposed regulatory action streamlines the requirements and application process for occupational therapists who have earned the CHT designation and who are

seeking Board approval to provide provides advanced practice services in the areas of hand therapy and physical agent modalities in California.

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

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

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

CONSIDERATION OF ALTERNATIVES:

Alternative:

The Board considered doing nothing; continuing to administer these provisions as they are written. This alternative was rejected because it does not enhance consumer protection while streamlining processing of the advance practice applications.

Benefits of this proposed action have been described in detail in various parts of this document. This regulatory action streamlines the requirements and application process for occupational therapists who have demonstrated advanced competency in a specific practice area: hand therapy. Acceptance of the CHT designation could potentially make California a more attractive State for an out-of-state practitioner to move to and practice. This regulatory action does not compromise nor diminish the public safety aspects which the existing regulations were designed to provide.