CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND CCR SECTIONS 4141 AND 4144, AND ADD SECTION 4145.

The following are attached for review:

- Notice
- Proposed Text
- Initial Statement of Reasons
- *Proposed* Modified Text

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 present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, in the Hearing Room, First Floor, 2005 Evergreen Street, Sacramento, CA 95815 at 10:30 am, on July 28, 2010.

Written comments, including those sent by mail, facsimile, or e-mail 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 July 26, 2010, or must be received by the Board at the hearing. 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 action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific BPC Sections 2570.2 and 2570.3, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law authorizes the board to establish, by regulation, a system for the issuance of a citation when an applicant to the board or a licensee is in violation of the applicable licensing act or any regulation adopted by the board. Existing regulations allows the Board's executive officer, or his or her designee, to issue citations containing orders of abatement and/or administrative fines against applicants pursuing licensure by the Board or licensed occupational therapists or occupational therapy assistants who are in violation of the Occupational Therapy Act or any regulation adopted pursuant thereto.

The proposed amendment to CCR Section 4141(a)(1) raises the maximum fine for Class "A" violations, that is, violations of a more serious nature, from $2,500 to $5000 in accordance with BPC Section 125.9(b)(3).

The first proposed amendment to CCR Section 4141(a)(2) raises the maximum fine for Class "B" violations, that is, violations of a less serious nature, from $1,000 to $2,500. The second proposed amendment clarifies the time period for practicing with an expired license from "91 to 365 days" to practicing "when the license has lapsed for a period of more than three calendar months but less than a one year period."

The proposed amendment to CCR Section 4141(a)(3) raises the maximum fine for Class "C" violations, that is, violations which are minor or technical in nature, from $500 to $1001. The second proposed amendment clarifies the time period for practicing with

an expired license from "practicing without a current and active license for 90 days" to practicing "when the license has lapsed for a period of three calendar months".

The proposed addition of CCR Section 4144 requires that after a citation has become final, it must be reported to other occupation therapy boards and other regulatory agencies.

Publication of citation disposition by the Board will directly inform and protect the public. Notice of citation disposition may impact the disciplinary activities of these other boards and agencies for licensing and enforcement purposes, thereby indirectly protecting the public.

The proposed addition of CCR Section 4145(a) requires that all final citations are reportable to the public upon request, and (b) establishes a retention schedule for the citations referred to in CCR 4145(a). The proposed addition of CCR 4145(c) creates an exception to the retention schedule established in CCR 4145(b) for citations issued to unlicensed individuals who have used specified titles or initials, fraudulently representing themselves as licensed occupational therapists or occupational therapy assistants.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500-176390 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impact that a representative private person or

business would necessarily incur in reasonable compliance with the proposed action. These amendments only relate to persons issued citations for failure to comply with the laws or regulations established by the board. Any cost impact incurred would directly impact the applicants for licensure or individual occupational therapists or occupational therapy assistants' who have violated the board's laws or regulations.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not impact small businesses because the regulations do not regulate, benefit or harm small businesses and do not require reports or any other compliance activities of small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would it be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, from our website as listed below, or upon written request from the contact person listed below.

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

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

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

CONTACT PERSON

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

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

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

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

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

Article 5. Citations

§ 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 $2,500 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 ~~$2,500~~ $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 $501 nor more than ~~$1,000~~ $2,500. Class "B" violations are violations that the executive officer, or his or her designee, has determined involve either a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the practice of 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, practicing ~~without a current and active license for 91 to 365 days~~ 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 ~~$500~~ $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 ~~without a current and active license for 90 days~~

~~or less~~ when the license has been expired or inactive for a period of three months or less, ~~or~~ 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, 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 or 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 of 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 (b).
(d) Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between $2,501 and $5,000, if one or more of the following circumstances apply:
(1) The citation involves a violation that has an immediate relationship to the health and safety of another person.
(2) The cited person has a history of two or more prior citations for the same or similar violations, except citations withdrawn or dismissed after appeal.
(3) The citation involves multiple violations that demonstrate a willful disregard of the statutes or regulations.
(4) The citation is for a violation or violations involving a minor, elder or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.
(e) The executive officer, or his or her designee, may assess a fine which shall not exceed five thousand dollars ($5000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare.

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

§ 4144. ~~Disciplinary Guidelines~~ Notification to Other Boards and Agencies

~~(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the~~

~~Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [December 2003] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems.~~
~~(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.~~

After a citation has become final, other than Class "D" citations, it shall be reported to other occupational therapy boards and other regulatory agencies.

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

~~Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.~~

§ 4145. Public Disclosure; Record Retention
(a) Every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public.
(b) Every citation, once it has been resolved by payment of the administrative fine and/or compliance with the order of abatement, shall be purged five (5) years from the date of resolution, except for citations referenced in subsection (c).
(c) No citation shall be purged if issued pursuant to CCR Section 4140(b), and no citation shall be purged for any citation issued against an unlicensed individual using the title "occupational therapist," "occupational therapy assistant," or the letters "OT," "OT/L," "OTR," "OTR/L," "OTA," "OTA/L, "COTA," or "COTA/L" after his or her name.
(d) A citation that has been withdrawn or dismissed shall be purged from the board's file as soon as administratively feasible, but no more than sixty days after the withdrawal or dismissal.

Note: Authority cited: Sections 125.9, 148, 2570.18, and 2570.20, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Citations

Sections Affected:
Title 16, Division 39, California Code of Regulations, Sections 4141, 4144 and 4145.
Business and Professions Code, Division 2. Healing Arts,

Chapter 5.6 Section 2570.2 and 2570.3.

SPECIFIC PURPOSE OF THE REGULATIONS:

The Board proposes to amend and increase the amount it can assess fines for violations of the Occupational Therapy Practice Act. Other proposed amendments establish a Public Disclosure and Record Retention policy for citations and modify fine assessments and time periods regarding unlicensed practice violations.

FACTUAL BASIS/NECESSITY:

Existing law authorizes the Board to issue citations to licensees and unlicensed persons for violating the Occupational Therapy Practice Act.

Business and Professions Code (BPC) Section 125.9 was amended to increase the maximum fine amounts assessed when the boards issue administrative citations, to no more than $5,000 per violation. The proposed regulations are necessary to bring the fine amounts consistent with the authority established in BCP Section 125.9.

The Department of Consumer Affairs' Consumer Protection Enforcement Initiative seeks to improve the processing times of complaints and handle disciplinary cases more effectively. The proposed regulations will provide the board greater latitude and increased options for the Board to use in its regulatory and enforcement functions. Cases which otherwise would be transmitted to the Attorney General for formal action may be resolved sooner through the proposed increased fine assessment authority.

Proposed amendments to CCR Section 4141(a)(1) will:

- Raise the maximum fine for Class "A" violations from $2,500 to $5,000. 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, while performing as either an occupational therapist or an occupational therapy assistant, and where there is no evidence that revocation or other disciplinary action is required to ensure public safety.

Proposed amendments to CCR Section 4141(a)(2) will:

- Raise the maximum fine for Class "B" violations from $1,000 to $2,500. Class "B" violations are less serious in nature and may include, but are not limited to, violations which could have resulted in patient harm.
- Clarify the wording used for the current language of CCR Section 4141(a)(2) for specified violations involving practicing "without a current and active license 91 to 365 days" to practicing while the license "has been expired or inactive for a period of more than three months but less than" a one year period.

Proposed amendments to CCR Section 4141(a)(3) will:

- Raise the maximum fine for Class "C" violations from $500 to $1,000. A class "C" violation is a minor or technical violation which is neither directly or potentially detrimental to patients nor potentially impacts their care.
- Clarify the wording used for the current language of CCR Section 4141(a)(2) for specified violations involving practicing "without a current and active license for 90 days" or less" to practicing while the license "has been expired or inactive for a period of three months" or less.

Proposed addition of CCR Section 4144 will:

- Mandate that all final board citations, excluding citations issued for failure to provide a current address as required, be published thereby directly informing and protecting the public concerning disciplinary matters and also notify other state occupational therapy boards and other regulatory agencies. This notice may impact the enforcement and licensing activities of other agencies or boards.

The purpose of the amendments to CCR Section 4144, as outlined above, is to ensure that any member of the inquiring public, and other occupational therapy boards and other regulatory agencies, have full disclosure and access to the public citations issued by the Board, with the intent to inform and protect the public utilizing occupational therapy services.

Proposed addition of CCR Section 4145(a) will:

- Require public disclosure of all citations issued by the board to any inquiring member of the public.

Proposed addition of CCR Section 4145(b) will:

- Establish the retention schedule for maintaining resolved citations at five (5) years from the date of resolution.

Proposed addition of CCR Section 4145(c) will:

- Exempt citations issued to unlicensed individuals, who represent themselves as occupational therapists or occupational therapy assistants by using specified titles or initials, from the retention schedule proposed in CCR Section 4145(b) above.

Proposed addition of CCR Section 4145(d) will:

- Purge citations which have been withdrawn of dismissed from the board's files as soon as is feasible, not to exceed sixty (60) days from the withdrawal or dismissal.

The purpose of the proposed addition of CCR Section 4145(a) is to establish a full disclosure mandate concerning any inquiring member of the public. The purpose of the proposed addition of CCR Section 4145(b) is to establish a record retention and destruction schedule for final citations of the Board. The purpose of the proposed addition of CCR Section 4145(c) is to exempt the proposed retention schedule set forth in CCR Section 4145(b) above when the citation involves false representation by unlicensed individuals that they are licensed occupational therapists, that is, the records of these citations are retained with no scheduled destruction date to ensure permanent access to the citations for fraud. The purpose of the proposed addition of CCR Section 4145(d) is the purging of any citations that are withdrawn or dismissed by the Board as soon as feasible so that the mere issuance of a citation will not mislead the public that the individual citee is being actively disciplined.

The overall purpose of the above amendments and proposed additions is to clarify the Board's policies regarding the maximum fines allowable, provide full disclosure, establish a record retention and destruction schedules concerning the handling of disciplinary citations.

UNDERLYING DATA:

Other than the provisions of BPC 125.9, there is no specific underlying data was relied upon.

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business.

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.

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

Proposed amendments are shown by strikeout for deleted text and underline for new text. Modifications to the proposed text are shown by ~~double strikeout~~ for deleted text and double underline for new text.

Article 5. Citations

§ 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 ~~$2,500~~ $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 ~~$2,500~~ $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 $501 nor more than ~~$1,000~~ $2,500. Class "B" violations are violations that the executive officer, or his or her designee, has determined involve either a person who, while engaged in the practice of occupational therapy, has violated a statute or regulation relating to the practice of 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, practicing ~~without a current and active license for 91 to 365 days~~ 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 ~~$500~~ $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 ~~without a current and active license for 90 days or less~~ when the license has been expired or inactive for a period of three months or less, ~~or~~ 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, 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 or 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 of 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 (b).
(d) ~~Notwithstanding the administrative fine amounts specified in this section, a citation may include a fine between $2,501 and $5,000, if one or more of the following circumstances apply:~~
~~(1) The citation involves a violation that has an immediate relationship to the health and safety of another person.~~
~~(2) The cited person has a history of two or more prior citations for the same or similar violations, except citations withdrawn or dismissed after appeal.~~
~~(3) The citation involves multiple violations that demonstrate a willful disregard of the statutes or regulations.~~
~~(4) The citation is for a violation or violations involving a minor, older or dependent adult, or a person with a physical or mental disability as defined in Section 12926 of the Government Code.~~
~~(e)~~ The executive officer, or his or her designee, may assess a fine which shall not exceed five thousand dollars ($5000) for each violation or count if the violation involves fraudulent billing ~~submitted to an insurance company, the Medi-Cal program, or Medicare~~.

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

NOTE: This section is the subject of rule-making file # Z-2010-0601-03

§ 4144. ~~Disciplinary Guidelines~~ ~~Notification to Other Boards and Agencies~~
~~(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" [December 2003] which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems.~~
~~(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.~~
~~After a citation has become final, other than Class "D" citations, it shall be reported to other occupational therapy boards and other regulatory agencies.~~

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

~~Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.~~

§ 4145. Public Disclosure; Record Retention
~~(a) Every citation that is issued pursuant to this article shall be disclosed to an inquiring member of the public.~~
~~(b)~~ (a) Every citation, once it has been resolved by payment of the administrative fine and/or compliance with the order of abatement, shall be purged five (5) years from the date of resolution, except for citations referenced in subsection (c).
~~(c)~~ (b) No citation shall be purged if issued pursuant to CCR Section 4140(b), and no citation shall be purged for any citation issued ~~against an~~ for unlicensed practice ~~individual using the title "occupational therapist," "occupational therapy assistant," or the letters "OT," "OT/L," "OTR," "OTR/L," "OTA," "OTA/L, "COTA," or "COTA/L" after his or her name~~.
~~(d) A citation that has been withdrawn or dismissed shall be purged from the board's file as soon as administratively feasible, but no more than sixty days after the withdrawal or dismissal.~~

Note: Authority cited: Sections 125.9, 148, 2570.18, and 2570.20, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO RENUMBER AND AMEND CCR, SECTION 4144 TO SECTION 4147 AND ADD SECTION 4148.

The following are attached for review:

- Notice
- Proposed Text
- Initial Statement of Reasons
- *Proposed* Modified Text

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 present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, in the Hearing Room, First Floor, 2005 Evergreen Street, Sacramento, CA 95815 at 10:45 am, on July 28, 2010.

Written comments, including those sent by mail, facsimile, or e-mail 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 July 26, 2010, or must be received by the Board at the hearing. 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 action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions (B&P) Code, and to implement, interpret or make specific B&P Code 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/POLICY STATEMENT OVERVIEW

Existing law, Division 39, Title 16 of the California Code of Regulations (CCR), is subdivided into "Articles" for the purpose of organizing related regulations into categories for easy reference. CCR Section 4144 can be found in "Article 5. Citations". This article includes the Board regulations relating to the issuance of citations to occupational therapists or occupational therapy assistants, or other non-licensees, who have committed any acts or omissions which are in violation of the Occupational Practice Act or any regulation adopted pursuant thereto.

Existing law, Government Code Section 11500 et seq., sets forth the rules and requirements applicable to an adjudicative proceeding for violations filed for disciplinary purposes. In 2003, the Board adopted "Disciplinary Guidelines December 2003" to establish consistency in disciplinary penalties for similar offenses on a statewide basis. Existing law also requires that the Board to consider its own disciplinary guidelines, set forth in "Disciplinary Guidelines December 2003", currently published on the Board's website, in order to reach an appropriate disposition for pending adjudicative proceedings.

The first proposed regulatory change action will:

- Create a new "Article 5.5 Enforcement" located between the final numbered regulations included in "Article 5. Citations" but before "Article 6. Advanced Practices".

The second proposed regulatory amendment will:

- Rename and renumber the current CCR "Section 4144. Disciplinary Guidelines" to "Section 4148. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines". This renamed and renumbered regulation will now be the first regulation included under the proposed "Article 5.5 Enforcement".

The third proposed regulatory amendment to the renamed and renumbered CCR Section 4148 will:

- Add the word "disciplinary" before the word "guidelines" to characterize, clarify and describe the types of guidelines and orders that the Board shall comply with when applying the newly adopted "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010".

- Clarify the rules that must be complied with in order to reach an appropriate disposition for pending adjudicative proceedings.

The fourth proposed amendment to the renamed and renumbered CCR Section 4148 will:

- Forbid both the Board and administrative law judge from imposing any terms and conditions of probation that are less restrictive than the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010".

These proposed regulatory changes will:

- Mandate that the Board comply with the updated and re-named "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010", which has been adopted and replaces "Disciplinary Guidelines December 2003".
- Mandate that neither the Board nor an administrative law judge deviate from the minimum terms or conditions of probation established by the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines July 2010".

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business:

The agency is not aware of any cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. These amendments only relate to persons against whom non-citation disciplinary proceedings have been initiated. Any cost impact incurred would relate to the individual occupational therapists or occupational therapy assistants' activities, or other affected persons, concerning opposing or challenging those disciplinary proceedings.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not impact small businesses because the regulations do not regulate, benefit or harm small businesses and do not require reports or any other compliance activities of small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would it be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, from our website as listed below, or upon written request from the contact person listed below.

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

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

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

CONTACT PERSON

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

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

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

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

Specific Language

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

Section 4144 of Division 39 of Title 16, Article 5 of the California Code of Regulations is amended to read:

Article 5.5 Enforcement

§ ~~4144~~ 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall ~~consider the disciplinary guidelines entitled~~ comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [~~December 2003~~ July 2010], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.
(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

§ 4148. Required Actions Against Registered Sex Offenders.

(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:
(1) Deny an application by the individual for licensure.
(2) Revoke the license of the individual, and shall not stay the revocation nor place the license on probation.
(3) Not reinstate or reissue the individual's license.
(b) This section shall not apply to any of the following:

(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.
(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.
(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation shall not be subject to the provisions of this section. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.

NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2965, and 2966, Business and Professions Code.

DRAFT

California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

~~December 2003~~ July 2010

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.bot.ca.gov.

California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

TABLE OF CONTENTS

- § 4144. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines — Page 3
- Uniform Standards for Those Licensees Whose License is on Probation Due to a Substance Abuse Problem — Page 4
- Disciplinary Guidelines — Page 9
- Penalties for Disciplinary Actions — Page 11
- Standard Terms and Conditions of Probation (1-13) — Page 15
- Optional Terms and Conditions of Probation (14-28) — Page 19
- Rehabilitation Criteria — Page 23
- Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License (reserved) — Page 24

California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

Article 5. Enforcement

§ 4144. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.

(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [March 2010] which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.
(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

WORK SITE MONITOR REQUIREMENTS:

If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:
a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.

b) Interview other staff in the office regarding the licensee's behavior, if applicable.
c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

If a licensee tests positive for a banned substance, the Board shall automatically suspend the licensee's license, immediately contact the licensee and inform him or her that his or her license has been suspended and he or she may not practice until the suspension is lifted. The Board shall also immediately notify the licensee's employer that the licensee's license has been automatically suspended, and that he or she may not practice until the suspension is lifted.

Major and Minor Violations

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in

such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board shall automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

DRUG TESTING STANDARDS

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.

2. Drug testing may be required on any day, including weekends and holidays.

3. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact as directed to determine if drug testing is required.

5. Licensees shall be drug tested on the date of notification as directed by the board.

6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

9. Collection of specimens shall be observed.

10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

DISCIPLINARY GUIDELINES

I. INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Board of Occupational Therapy (Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorney's administrative law judges, occupational therapists, occupational therapy assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

For purposes of this document, the term "license" includes the occupational therapy license and the occupational therapy assistant certificate. The terms and conditions of probation are divided into two general categories:

(1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
(2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the ~~The~~ Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken.

~~Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.bot.ca.gov.~~

II. GENERAL CONSIDERATIONS

The Board requests that Proposed Decisions following administrative hearings include the following:
a. Specific code sections violated with their definitions.
b. Clear description of the violation.
c. Respondent's explanation of the violation if he/she is present at the hearing.
d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

III. DEFINITION OF PENALTIES

Revocation: Loss of a license as the result of any one (1) or more violations of the Occupational Therapy Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

Suspension: Invalidation of a license for a fixed period of time, not to exceed one (1) year.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's

compliance with the terms of his/her probation.
Probation: A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his/her conduct or preventing the likelihood of a recurrence of the violation.

IV. DISCIPLINARY GUIDELINES

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages 8-14.

BUSINESS AND PROFESSIONS CODE SECTIONS – Occupational Therapy Practice Act

Section 2570.23:	**Violation of 2570.3 - Unlicensed Person Engaging in Practice - Sanctions**
Applicant Maximum:	Denial of application for a license
Applicant Minimum:	Thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(a)(1),(2),or(3):	**Unprofessional Conduct – Incompetence, Gross Negligence, Repeated Negligent Acts, Conviction of Practicing Medicine**
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#22 and #23]
Section 2570.28(a)(4):	**Unprofessional Conduct – False Advertising**
Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(a)(5):	**Unprofessional Conduct – Discipline by Other Government Agency**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]

Section 2570.28(b): **Procuring a License by Fraud, Misrepresentation, Mistake**

Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional condition [#22]

Section 2570.28(c): **Violating Any Provision of the Occupational Therapy Practice Act or Regulations**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]

Section 2570.28(d): **False Statement on Application for License or Renewal**

Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]

Section 2570.28(e): **Conviction of Crime Substantially Related to License**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#25, #26]

Section 2570.28(f) or (g): **Impersonating an Applicant or Acting as Proxy for Another in an Examination for Licensure, Impersonating a Licensee or Allowing Another Person to Use License**

Maximum:	Revocation
Minimum:	Stayed revocation, thirty (30) days actual

suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(h): **Committing Fraud, Dishonest or Corrupt Act**

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(i): **Committing Any Act Punishable as Sexually Related Crime**

Maximum: Revocation
Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional Conditions [#15, #16, #23]

Section 2570.28(j): **Using Excessive Force, Mistreating or Abusing Patient**

Maximum: Revocation
Minimum: Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional Conditions [#15, #16, #23]

Section 2570.28(k): **Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional Conditions [#14, #17-#19, #21]

Section 2570.28(l): **Changing the Prescription of Physician or Falsifying Verbal or Written Orders**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years

probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(m): **Failing to Maintain Patient Confidentiality**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(n): **Delegating Services that Require License to Unlicensed Person**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(o): **Committing Act that would be Grounds for Denial under Section 480**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(p): **Failing to Follow Infection Control Guidelines**

Maximum: Revocation
Minimum: Stayed revocation and one (1) year probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.29(a): **Obtain, Possess, Administer to Self, Furnish or Administer to Others, Controlled Substance**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#14, #17-#19, #21]

Section 2570.29(b)(1)(2) or (3): **Use Controlled Substance, Dangerous Drug, Alcohol in Manner Dangerous, Injurious to Self or Others**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#21]

Section 2570.29(c): **Conviction of Crime Involving Controlled Substance, Dangerous Drug, Alcohol or Falsifying a Record Involving Same**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#21, 26]

Section 2570.29(d): **Committed or Confined by Court for Intemperate Use of Controlled Substance, Dangerous Drug, Alcohol**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#21, #26]

Section 2570.29(e): **Falsify, Make Grossly Incorrect, Inconsistent, or Unintelligible Entries in Hospital/Patient Record involving Controlled Substance or Dangerous Drug**

Maximum:	Revocation
Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#19, #21]

GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE

Section 125.6: **Discrimination by Licensee**

Maximum:	Revocation
Minimum:	Stayed revocation and one (1) year probation on the following conditions: a. Standard conditions [#1-#13]

Section 480 (a): **Denial of Licenses**

Maximum/Minimum: Denial of license

Section 480 (a): Denial of Licenses

Maximum/Minimum: Denial of license

Section 496: Subversion of Licensing Examinations or Administration of Examinations.

Maximum:	Denial or revocation of license
Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13} b. Optional condition [#22]

V. STANDARD CONDITIONS OF PROBATION
(to be included in all cases of probation)

1. Obey All Laws
Respondent shall obey all federal, state and local laws and regulations governing the practice of occupational therapy in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Board within five (5) days of occurrence.

2. Compliance with Probation and Quarterly Reporting
Respondent shall fully comply with the terms and conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board (Attachment A).

3. Personal Appearances
Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Notification of Address and Telephone Number Change(s)
Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of his/her new address and any change in work and/or home telephone numbers.

5. Tolling for Out-of-State Practice, Residence or In-State Non-Practice
In the event respondent should leave California to reside or to practice outside the State for more than thirty (30) days, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of departure and return. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until respondent resumes practice in

California. All provisions of probation shall recommence on the effective date of resumption of practice in California.

6. Notification to Employer(s)

[uniform standard #3]

When currently employed, ~~or~~ applying for employment in any capacity, or contracted to provide occupational therapy services, ~~in any health care profession~~ Respondent shall ~~notify his/her~~ provide a copy of the Board's Decision to each employer, supervisor, or contractor ~~of the probationary status of respondent's license. This notification to the current employer shall occur~~ no later than the effective date of the Decision. Respondent shall notify any prospective ~~health care~~ employer, supervisor, or contractor of his/her probationary status with the Board prior to accepting such employment. This notification shall ~~be made by providing the employer or prospective employer with~~ include a copy of the Board's Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

The respondent shall provide to the Board the names, physical addresses, and telephone numbers of all employers, supervisors and contractors.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board to allow the Board to communicate with the employer and supervisor or contractor.

Respondent shall cause each ~~health care~~ employer and supervisor or contractor to submit quarterly reports to the Board. The report shall be on a form provided by the Board, and shall include a performance evaluation and such other information as may be required by the Board (Attachment B).

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, within five (5) days if he/she is terminated from any occupational therapy or health care related employment with a full explanation of the circumstances surrounding the termination.

7. Employment Requirements and Limitations

During probation, respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a registry or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, or his or her license is temporarily suspended, the period of probation shall be tolled during that time.

8. Supervision Requirements

Respondent shall obtain prior approval from the Board, before commencing any employment, regarding the level of supervision provided to the respondent while employed as an occupational therapist or occupational therapy assistant.

Respondent shall not function as a supervisor during the period of probation except as approved, in writing, by the Board.

9. Continuing Education Requirements

Respondent shall complete continuing education directly relevant to the violation as specified by the Board. Continuing education shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Continuing education shall be in addition to the professional development activities required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of the assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Failure to satisfactorily complete the required continuing education as scheduled or failure to complete same no later than 100 days prior to the termination of probation shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion of the course(s), respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. Maintenance of Valid License

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

11. Cost Recovery Requirements

Where an order for recovery of costs is made, respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one (1) year, the license of any respondent who demonstrates financial hardship. Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one (1) year period.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation

If respondent violates probation in any respect, the Board, after giving respondent

notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

13. Completion of Probation
Upon successful completion of probation, respondent's license will be fully restored.

VI. OPTIONAL CONDITIONS OF PROBATION

14. Examination by a Physician
Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician and surgeon of his/her choice who meets minimum criteria established by the Board. The physician and surgeon ~~must~~ shall be licensed in California and Medical Board Certified in Family Practice, Internal Medicine or a related specialty. The purpose of the examination shall be to determine respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Disciplinary Order prior to the examination. Cost of such examination shall be paid by respondent.

Respondent shall cause the physician and surgeon to complete a written medical report to be submitted directly to the Board within ninety (90) days of the effective date of the Decision. If the examining physician and surgeon finds that respondent is not physically fit to practice or can only practice with restrictions the ~~examining~~ physician shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the ~~examining~~ physician~~'s~~ and surgeon's determination of unfitness to practice and shall order the respondent to cease practice or place restrictions on respondent's practice. ~~licensed activities as a condition of probation.~~ Respondent shall comply with ~~this condition~~ any order to cease practice or restriction of his or her practice until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. ~~Respondent shall document compliance in the manner required by the Board.~~

15. Psychological Evaluation
Within sixty (60) days of the effective date of the Decision, respondent shall submit to a psychiatric~~/~~ or psychological evaluation. Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed evaluators for prior approval by the Board to conduct a psychiatric or psychological evaluation. The evaluation shall be performed by a ~~psychiatrist~~ physician and surgeon licensed in California and ~~Medical~~ Board Certified in Psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to safely perform all professional duties with safety to self and the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely or can only practice safely with restrictions, the evaluator shall orally notify the Board within one (1) working day, and then notify the Board, in writing, within five (5) working days. The Board shall notify the respondent in writing of the evaluator's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

16. Psychotherapy

Within sixty (60) days of the effective date of the Decision, respondent shall submit to the Board the name of one (1) or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional approved by the Board. ~~Upon~~ Within ten (10) days of receiving notification of approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that respondent is not fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the therapist's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance with this condition in the manner required by the Board.

17. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license shall be automatically suspended for minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent's license shall remain suspended until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any restrictions or recommendations made by the Board as a result of the clinical diagnostic evaluation.

~~**17. Rehabilitation Program**~~

~~Within thirty (30) days of the effective date of the Decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.~~

~~Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work settings, random bodily fluid testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. Cost for participation in this program shall be paid by respondent.~~

18. Chemical Dependency Support/Recovery Groups

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous). Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

19. Abstain from Controlled Substances

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

20. Abstain from use of Alcohol
Respondent shall completely abstain from the ~~use~~ intake of alcohol~~ic beverages~~ during the period of probation.

21. Submit Biological Fluid Samples
Respondent shall immediately submit to random and directed biological fluid testing, at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and at minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. ~~There will be no confidentiality in the test results; positive test results will be immediately reported to the Board and the respondent's current employer.~~ If Respondent tests positive for a banned substance, Respondent's license shall be automatically suspended. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit to his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

22. Take and Pass the Licensure Examination
Respondent shall take and pass the licensure examination currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

As a condition precedent to reinstatement of a license, respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or other terms of probation shall be tolled until the respondent has successfully passed the licensure examination and notice of licensure has been mailed to respondent by the Board.

23. Worksite Monitor
Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

~~23.~~24. Restriction on Licensed Practice
Respondent shall practice only with a specified client population, in a specified practice

setting, or engage in limited occupational therapy services. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in a manner required by the Board.

~~24.~~25. Suspension
Respondent is suspended from the practice of occupational therapy for _____ days beginning on the effective date of the Decision. Respondent shall be responsible for informing his or her employer of the Board's decision, the reasons for the length of suspension. Prior to the lifting of the actual suspension of license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.

~~25.~~26. Restitution
Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of $_____ and shall provide the Board with proof from _____ attesting that the full restitution has been paid. In all cases, restitution shall be made before the termination of probation.

~~26.~~27. Criminal Probation Reports
Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

~~27.~~28. Relinquish License and Wall Certificate
Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within ten (10) days of the effective date of the Decision and order.

~~28.~~29. Notification to Clients/Cessation of Practice
In orders that provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

VII. REHABILITATION CRITERIA

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
(4) The extent to which the applicant has complied with any terms of parole, probation,

restitution, or any other sanctions lawfully imposed against the applicant.
(5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act(s) or offense(s).
(2) Total criminal record.
(3) The time that has elapsed since commission of the act(s) or offense(s).
(4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
(5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
(6) Evidence, if any, of rehabilitation submitted by the licensee.

VIII. PETITION FOR REINSTATEMENT/REDUCTION IN PENALTY

When considering a petition for reinstatement of the license or a petition for reduction in penalty, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in section VII above.

OCCUPATIONAL THERAPY BOARD OF CALIFORNIA

INITIAL STATEMENT OF REASONS

Hearing Date: July 28, 2010

Subject Matter of Proposed Regulations: Disciplinary Guidelines and Uniform Standards related to Substance Abuse

Sections Affected: 16 CCR § 4144

Specific Purpose of Proposed Regulations:

The Board proposes to amend and update its Disciplinary Guidelines to include uniform standards related to substance abuse reflecting changes in current law and the current probationary environment, clarifying existing language and making technical changes. The current Disciplinary Guidelines referenced in the regulation (December 2003) will be updated as of July 2010.

Factual Basis/Rationale:

On June 30, 2008, the Medical Board of California was scheduled to sunset its Diversion Program and reverted to disciplinary action as the only means of addressing physicians with substance abuse problems. The sunset was primarily due to the program's failure of its fifth audit, conducted by the Center for Public Interest Law (the Medical Board's Enforcement Monitor), for overall ineffectiveness, lack of standards and failure to protect the public from harm. At the same time, there was extensive media coverage citing deficiencies in the Medical Board's Diversion Program, including patients harmed by physicians who continued to practice even after testing positive for drugs. On January 24, 2008, with the sunset of its Diversion Program imminent, the Medical Board held a Diversion Summit to discuss other options for physicians with substance abuse problems.

On March 10, 2008, the Senate Business, Professions and Economic Development Committee (Senate Committee) held a hearing to review physicians' and health practitioners' substance abuse programs. The resulting legislation, authored by the Senate Committee's Chair, Senator Ridley-Thomas, was SB 1441: Healing arts practitioners: substance abuse (Chapter. 548, Statutes of 2008)

In September 2008, SB 1441 was signed into law. The Legislature declared that substance abuse monitoring programs, particularly for health care professionals, must operate with the highest level of integrity and consistency. Patient protection is paramount. The legislation, in part, mandated that the Department of Consumer Affairs (Department) establish a Substance Abuse Coordination Committee (Committee) subject to the Bagley-Keene Open Meeting Act and comprised of the Executive Officers of the Department's healing arts Boards, a representative of the California Department of Alcohol and Drug Programs, and chaired by the Director of the Department. The

Committee was charged with developing consistent and uniform standards and best practices in sixteen specific areas for use in dealing with substance abusing licensees, whether or not a Board chooses to have a formal diversion program. The Department is committed to ensuring that licensees who are confirmed to be abusing drugs and/or alcohol, and who pose a risk to the public, are not diverted from an enforcement action or public disclosure of that action. The Department is also committed to ensuring that licensees who have undergone treatment and have made steps towards recovery can safely return to practice. The Committee has developed 16 uniform standards as required by SB 1441. The Board is proposing to implement those uniform standards in its Disciplinary Guidelines through the regulatory process.

Existing Law

Business and Professions (B&P) Code Section 2570.25 requires that protection of the public is the highest priority for the Board in exercising its licensing, regulatory and disciplinary functions.

B&P Code Section 2570.27 allows the Board, among other things, to place a license on probation with terms and conditions.

B&P Code Section 2570.28 allows the Board to deny or discipline a licensee for, among other things, unprofessional conduct, which includes incompetence or gross negligence in carrying out usual occupational therapy functions.

The Board proposes to add specified uniform standards related to substance abuse by incorporating them by reference into their regulations. The following describes those uniforms standards the Board is adding, including the update of their Disciplinary Guidelines and other clarifying and minor changes.

16 CCR § 4144

This section has been renumbered from 4144 to 4148 and contains the following amendments:

- Add "Uniform Standards Related to Substance Abuse and" to the section title Disciplinary Guidelines (Guidelines) and section body to reflect the addition of the uniform standards to the Guidelines. The title reads "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines."
- Add language to clarify that neither the Board nor an Administrative Law Judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.
- Change the revision date for the Guidelines from December 2003 to July 2010.

Disciplinary Guidelines

Title Page

- Add "Uniform Standards Related to Substance Abuse and" to the Guidelines title page to reflect the addition of the uniform standards to the Guidelines to read "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines."
- Change the revision date on the title page from December 2003 to July 2010.
- Add the following language to the title page of the Guidelines: "Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.bot.ca.gov.

Table of Contents

- Add a table of contents to the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines." The table of contents includes the following new language:

  - § 4148. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
  - Uniform Standards for Those Licensees Whose License is on Probation Due to a Substance Abuse Problem
  - Disciplinary Guidelines
  - Penalties for Disciplinary Actions
  - Standard Terms and Conditions of Probation (1-13)
  - Optional Terms and Conditions of Probation (14-28)
  - Rehabilitation Criteria
  - Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License (reserved)

Uniform Standards

The Board is adding the following uniform standards. Discussion follows each bulleted standard that the Board proposes to adopt.

1. Clinical Diagnostic Evaluations

In order to comply with the SB 1441 uniform standards, the Board proposes to require that if a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluation must be conducted by a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, has three (3) years' experience in providing evaluations of health care professionals with substance abuse disorders and is

approved by the Board. The evaluations are to be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Discussion

A clinical diagnostic evaluation would not be necessary in a situation where there is demonstrable immediate threat to the public safety and/or where violations are so egregious (e.g. crimes in addition to substance abuse, harm/death of a patient) that the Board would not allow the licensee to practice under any circumstances; thus, the Board would seek revocation instead of permitting rehabilitation/treatment.

This standard would increase consumer protection by:

- Specifying requirements for a clinical diagnostic evaluation of the licensee, required qualifications for the providers evaluating the licensee, and timeframes for completion of the clinical diagnostic evaluation.
- Ensuring that the Board is notified quickly if the licensee is a threat to himself/herself or the public while allowing for due process.
- Setting forth minimum standards for clinical diagnostic evaluations and ensures evaluations are conducted in accordance with applicable best practices, while allowing the evaluator the discretion to determine and use the most appropriate tool in assessing the licensee.
- Providing the Board with a professional opinion as to whether the licensee has a substance abuse problem, and whether the licensee is a threat to himself/ herself or others.
- Prohibiting personal, financial and business relationships between the evaluator and licensee, thereby ensuring objectivity in assessments.

By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice.

2. Clinical Diagnostic Evaluation Report

In order to comply with the SB 1441 uniform standards, the Board proposes to require what the Clinical Diagnostic Evaluation Report (Report) would contain, including but not limited to, the evaluator's opinion, whether the licensee has a substance abuse problem and recommendations for substance abuse treatment. The Board also proposes to require that (1) the evaluator not have a financial, personal or business relationship with the licensee in the last five years; (2) if the evaluator determines during the process that a licensee is a threat to him/herself or others, the evaluator is to notify the Board with 24 hours of such a determination; (3) the final written Report is to be provided to the Board no later than 10 days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

In addition, the Board proposes to require that the Board review the evaluation to determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the specified criteria that includes, but is not limited to, license type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history.

The Board further proposes to require that the Board take into consideration certain factors when determining if the licensee should be required to participate in inpatient, outpatient or other type of treatment. These factors, include, but are not limited to, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition.

Discussion

Because of the complexity of an addictive disease, professional substance abuse evaluations are needed to assist the Board in making informed decisions regarding a licensee. An evaluation by a professional experienced in substance abuse and approved by the Board can provide valuable information to assist the Board in evaluating a case. The Board needs the opinion of professional evaluators to help it determine the possible basis for the indentified behavior. Many individuals who have substance abuse issues also have other mental health problems/diagnoses. The evaluator can present recommendations for a therapeutic plan. Any disciplinary action should be based on the behavior and the resulting harm or risk of harm. Treatment recommendations may be incorporated into a contract or Board order as elements for monitoring or criteria toward re-entry requirements.

By specifying that the Board be provided with expert recommendations for treatment and practice restrictions, the standard also ensures that licensees who have undergone treatment and have made steps towards recovery can safely return to practice

The Board has statutory authority over licensees and a mandate to protect the public; however, the Board's ability to remove licensees immediately from the work place is limited. There are requirements of due process, which require clear and convincing evidence in some cases, the preponderance of evidence, or proof of immediate, imminent danger to the public in others. These requirements are necessary in order for the Board to legitimately, prevent someone from practicing in the livelihood for which they are licensed. In some cases an Interim Suspension Order (ISO), Temporary Suspension Order (TSO), or Penal Code 23 (PC 23) is required. The ISO and TSO have a tendency to be expensive, labor intensive, and require time to process. These are part of a disciplinary process and are usually temporary until an accusation is filed and a decision rendered. The PC 23 is the result of criminal action taking place and allows for suspension of the license based on criminal filings. In each case, the cause for the suspension must be proven or found, and there must be sufficient evidence to warrant the action. The ability of any licensing agency to have the financial means to issue hundreds of orders based on complaints alone without legitimate, legally authorized investigations is unrealistic, and would be met with opposition from every

area of the professional landscape: licensees, associations, attorneys, public advocates, etc.

The value added to the program is the ability to quickly intervene when a licensee is presented as having a substance abuse issue whether or not there is sufficient evidence to warrant an ISO, or TSO.

3. Work Site Monitor Requirements

In order to comply with the SB 1441 uniform standards, the Board proposes that if the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor (monitor) must meet specified requirements to be considered for approval by the Board. These requirements include, but are not limited to, (1) no current or former financial, personal or familial relationship with the licensee or other relationships that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board; (2) have an active unrestricted license with no disciplinary action within the last five (5) years; (3) adhere to specified methods of monitoring the licensee.

In addition, the Board proposes to require reporting requirements of the monitor as follows:

- Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

- Complete and submit a written report monthly or as directed by the Board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

- Complete the required consent forms and sign an agreement with the monitor and the Board to allow the Board to communicate with the monitor.

Discussion

As directed in SB 1441, the Board is required to establish monitor requirements and standards, including, but not limited to, (1) required qualifications of monitors, (2) required methods of monitoring by monitors, and (3) required reporting by monitors. The monitor's role is to monitor a licensee who is chemically impaired and to ensure that the license is not abusing drugs and/or alcohol. The monitor is also responsible for reporting to the Board whether patient safety may be at risk and any change in the licensee's behavior that may be cause for suspected substance abuse.

The monitor should not have any financial or personal relationship with the licensee. This will ensure that the monitor is providing impartial evaluations. The provision that allows the Board to waive this requirement is due to the fact that some licensees may only have available to them a monitor who is their employer. The Board will review these types of situations on a case-by-case basis. It is also important that the monitor be a health care professional but that he or she did not have to be of the same profession, as this may not be manageable in a hospital setting if the manager of the department is of a different profession.

Frequent face-to-face contact with the licensee is important in order to assess the licensee's appearance, eye contact, and behavior. The monitor needs to interview the staff in the office on the licensee's behavior and review the attendance records in order to adequately report to the Board the licensee's overall performance.

The reporting criteria would identify a timeline for reporting to the Board of possible substance abuse by the licensee, what information must be included in the monitor report, and the timeline the report is to be submitted to the Board.

Also, included in the standard is language to require the licensee and monitor to sign and submit the required consent forms and affirmations in order for the Board to communicate with the monitor.

Implementing this standard would provide (1) ongoing documentation of the licensee's behavior and would ensure the public's safety and (2) immediate notification to the Board if a licensee is suspected of working under the influence of drugs and/or alcohol.

4. **Test Positive for Banned Substance(s)**

In order to comply with the SB 1441 uniform standards, the Board proposes to require that it (1) suspend a licensee's license if he/she tests positive for a banned substance, (2) immediately contact the licensee and inform him/her that his/her license has been suspended and that he/she may not practice until the suspension is lifted. The Board would also be required to immediately notify the licensee's employer that the licensee's license has been automatically suspended and that he/she may not practice until the suspension is lifted.

Discussion

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. In order to carry out this mandate, it is appropriate for the Board to suspend a licensee's license if he/she tests positive for a banned substance until he/she has been assessed and the results interpreted.

5. Major and Minor Violations

In order to comply with the SB 1441 uniform standards, the Board proposes to include the following definitions for major and minor violations:

Major Violations include, but are not limited to, the following:

1. Failure to complete a Board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a major violation, the Board would be required to automatically suspend the licensee's license and refer the matter for disciplinary action or other action as determined by the Board.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

If a licensee commits a minor violation, the Board would be required to determine what action is appropriate.

Discussion

Protection of the public is the highest priority of the Board in exercising its licensing, regulatory and disciplinary functions. The Board protects the public through its Practice Act, regulations and related statutes. Major violations would result in consequences that would be the maximum allowed by current law under the Board's Practice Act and regulations. Minor violations would result in consequences determined appropriate b y the Board, i.e., increased biological testing, increased meeting attendance.

6. Drug Testing Standards

In order to comply with the SB 1441 uniform standards, the Board proposes to include the following uniform standard for drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year of probation, and at any time as directed by the Board. After the first year, practicing licensees, shall be randomly drug tested at least 50 times per year, and at any time as directed by the Board.

2. Drug testing may be required on any day, including weekends and holidays.

3. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact as directed to determine if drug testing is required.

5. Licensees shall be drug tested on the date of notification as directed by the Board.

6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

9. Collection of specimens shall be observed.

10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the Board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site would be required to submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody would be used on all specimens. The laboratory would be required to process results and provide legally defensible test results within seven (7) days of receipt of the specimen and notify the Board of non-negative test results within one (1) business day and of negative test results within seven (7) business days.

Discussion

Many of the standards specific to testing collection and specimen handling are consistent with or based upon the guidelines established by the U.S. Department of Transportation.

Requiring the certification of laboratories through the National Laboratories Certification Program ensures consistent handling and processing of test results. The minimum number of tests provided will help to identify relapse and allow for licensees to be randomly tested.

Requiring a licensee to submit a specimen on the same day as directed will eliminate the ability of a licensee to "flush" their system overnight. Further, the established certification of the laboratory will include creatine and pH levels, which can be a sign of a licensee "flushing" their system. Further, the standard is broad enough to allow the

Board to determine on a case-by-case basis if a licensee should be required to submit a specimen more quickly, e.g., before 10:00 a.m. or within six (6) hours of notice.

Disciplinary Guidelines

I. **Introduction**

Clarify that the uniform standards are requirements mandated by SB 1441.

The obtaining of "additional copies" statement has been deleted and moved to the title page of the incorporated by reference document on page 9, Introduction of the Disciplinary Guidelines.

II. **General Considerations**

Add "Factors to be Considered" for clarification on page 9.

V. **Standard Conditions of Probation**

#6 – Notification to Employer(s) – Make clarifying changes regarding the respondent's directive to provide a copy of the Board's Decision to each employer, supervisor or contractor. The respondent shall also notify any prospective employer, supervisor or contractor is his/her probationary status with the Board prior to accepting employment. The respondent shall provide to the Board the names, physical addresses and telephone numbers of all employers, supervisors and contractors, and complete the required consent forms and sign an agreement with the employer and supervisor or contractor and Board to allow the Board to communicate with the employer, supervisor or contractor.

Add "supervisor or contractor" to the requirement for submitting quarterly reports to the Board.

#7 – "Employment Requirements and Limitations" – Add language requiring the respondent to work in his or capacity in the State of California during probation. If the respondent is unable to secure employment in his or her capacity, or his or her license is temporarily suspended, the period of probation shall be tolled during that time. Tolling means to stop or suspend the operation of a statute, usually used in reference to statutes of limitations.

#12 – "Violation of Probation" – Add language requiring respondent to comply with all probation conditions until the matter is finalized.

#14 – "Examination by Physician" – Clarify by adding "surgeon" to complete term "physician and surgeon", which is the licensing term used under the Medical Practice Act.

Clarify that the Board shall order the respondent to cease practice or place restrictions on respondent's practice and that the respondent is to comply with any order to cease

practice or restriction of his/her practice until the Board notifies the respondent in writing that he/she can return to practice.

#15 – "Psychological Evaluation" – Clarify that the respondent within 20 days of the effective date of the Board's decision, must submit to the Board the name of one or more proposed evaluators for prior approval by the Board to conduct a psychiatric or psychological evaluation. Such an evaluation is to be done within 60 days of the effective date of the Board's Decision.

Clarify by adding "surgeon" to complete term "physician and surgeon", which is the licensing term used under the Medical Practice Act.

Clarify by adding "safely" in reference to performing all professional duties with regard to self and the public.

Clarify that the evaluator shall orally notify the Board with one (1) working day if the evaluator finds that the respondent is not psychologically fit to practice safely or can only practice safely with restrictions.

#16 – "Psychotherapy" – Clarify by adding "within ten (10) days of" to receiving notification of" approval by the Board of the mental health profession to be used by the respondent, the respondent is to begin psychotherapy.

Clarify by adding "safely" in reference to performing all professional duties with regard to self and the public.

#17 – "Clinical Diagnostic Evaluation" – Add new item, "Clinical Diagnostic Evaluation" to comply with uniform standards – #1 and #2 of Uniform Standards above.

Delete #17 – Rehabilitation Program.

#18 – "Chemical Dependency Support/Recovery Groups" – Clarify that the respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

#20 – "Abstain from Alcohol" – Delete the term "alcoholic beverages" and clarify with the term "intake of alcohol."

#21 – "Submit Biological Fluid Samples" – add language to comply with uniform standards – #6 of Uniform Standards above – drug testing standards.

#23 – "Worksite Monitor" – add new section to comply with uniform standards re worksite monitor - #3 of Uniform Standards above.

Renumbering

#25 (new) – "Suspension" – add language to clarify that the respondent is to be responsible for informing his or her employer of the Board's decision, the reasons for

the length of suspension and that prior to the lifting of the actual suspension of license, the Board is to receive pertinent documentation confirming that the respondent is safe to return to practice under specific terms and conditions as determined by the Board.

Underlying Data:

1. SB 1441 Uniform Standards (attached)

Business Impact:

This regulation only impacts Occupational Therapists disciplined by the Occupational Therapy Board of California.

Specific Technologies or Equipment:

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

Consideration of Alternatives:

No other alternative could be considered since promulgation of these regulations is required by SB 1441.

ESTIMATED COST: SB 1441 specified that the diversion program responsibilities imposed on licensing Boards under its provisions will be absorbed into the current operating expenses of the Boards.

California Board of Occupational Therapy

Specific Language

Changes to the proposed text are shown by ~~double strikeout~~ for deleted text and double underline for new text.

Section 4144 of Division 39 of Title 16, Article 5 of the California Code of Regulations is amended to read:

Article 5.5. ~~Uniform Standards Related to Substance Abuse and Disciplinary Guidelines~~ Standards Related to Denial, Discipline, and Reinstatement of Licenses

§ ~~4144~~ 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines
(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall ~~consider the disciplinary guidelines entitled~~ comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [~~December 2003~~ July 2010], which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.
(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.
Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

~~§ 4148. Required Actions Against Registered Sex Offenders.~~
~~(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:~~
~~(1) Deny an application by the individual for licensure.~~
~~(2) Revoke the license of the individual, and shall not stay the revocation nor place the license on probation.~~
~~(3) Not reinstate or reissue the individual's license.~~
~~(b) This section shall not apply to any of the following:~~
~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.~~
~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under section 314 of the Penal Code.~~

~~(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation shall not be subject to the provisions of this section. A petition for reinstatement of a revoked or prohibition in subsection (a) against reinstating a license shall govern.~~

~~NOTE: Authority cited: Section 2930, Business and Professions Code. Reference: Sections 2960, 2960.6, 2961, 2962, 2963, 2964, 2964.3, 2965, and 2966, Business and Professions Code.~~

DRAFT

California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

~~December 2003~~ July 2010

Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.bot.ca.gov.

California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

TABLE OF CONTENTS

- § ~~4144~~ 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines — Page 3
- Uniform Standards for Those Licensees Whose License is on Probation Due to a Substance Abuse Problem — Page 4
- Disciplinary Guidelines — Page 9
- Penalties for Disciplinary Actions — Page 11
- Standard Terms and Conditions of Probation (1-13) — Page 15
- Optional Terms and Conditions of Probation (14-28) — Page 19
- Rehabilitation Criteria — Page 23
- Recommended Language for Issuance and Placement of a License on Probation, and Reinstatement of License (reserved) — Page 24

California Board of Occupational Therapy

UNIFORM STANDARDS RELATED TO SUBSTANCE ABUSE AND DISCIPLINARY GUIDELINES

Article 5.5 ~~Enforcement~~ Standards Related to Denial, Discipline, and Reinstatement of Licenses

§ ~~4144~~ 4147. Uniform Standards Related to Substance Abuse and Disciplinary Guidelines.
(a) In reaching a decision on a disciplinary action under the administrative adjudication provisions of the Administrative Procedure Act (Government Code section 11400 et seq.), the Board shall comply with the "Uniform Standards Related to Substance Abuse and Disciplinary Guidelines" [~~March~~ July 2010] which are hereby incorporated by reference. Deviation from these disciplinary guidelines and orders, including the standard terms of probation, is appropriate where the Board in its sole discretion determines that the facts of the particular case warrant such deviation, e.g., the presence of mitigating factors; age of the case; evidentiary problems. Neither the board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the Uniform Standards Related to Substance Abuse.
(b) All probationers shall submit and cause each health care employer to submit quarterly reports to the Board. The reports shall be on forms obtained by the Board, which are hereby incorporated by reference.

Note: Authority cited: Section 2570.20 Business and Profession Code. Reference: Sections 125.6, 125.9, 315, 475, 480, 481, 482, 490, 496, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, 2570.32, Business and Professions Code and Section 11425.50(e), Government Code.

UNIFORM STANDARDS FOR THOSE LICENSEES WHOSE LICENSE IS ON PROBATION DUE TO A SUBSTANCE ABUSE PROBLEM

The following standards shall be adhered to in all cases in which a licensee's license is placed on probation due, in part, to a substance abuse problem. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public.

Clinical Diagnostic Evaluations:

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license which scope of practice authorizes him or her to conduct clinical diagnostic evaluations, has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders, and is approved by the Board. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

Clinical Diagnostic Evaluation Report:

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have a financial, personal, or business relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

FACILITATED GROUP SUPPORT MEETINGS [#5 Uniform Standard]
If a board requires a licensee to participate in facilitated group support meetings, the following shall apply:
When determining the frequency of required facilitated group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:
1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

WORK SITE MONITOR REQUIREMENTS:

If a Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.
b) Interview other staff in the office regarding the licensee's behavior, if applicable.
c) Review the licensee's work attendance.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

~~If a licensee tests positive for a banned substance, the Board shall automatically suspend the licensee's license, immediately contact the licensee and inform him or her that his or her license has been suspended and he or she may not practice until the suspension is lifted. The Board shall also immediately notify the licensee's employer that the licensee's license has been automatically suspended, and that he or she may not practice until the suspension is lifted.~~

Major and Minor Violations

If a licensee commits a major violation, the Board shall order the licensee immediately to cease any practice of occupational therapy, immediately contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice unless notified by the Board, and refer the matter for disciplinary action or other action as determined by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

~~If a licensee commits a major violation, the Board shall automatically suspend the licensee's license and~~

~~refer the matter for disciplinary action or other action as determined by the Board.~~

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused attendance at required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

~~If a licensee commits a minor violation, the Board shall determine what action is appropriate.~~

DRUG TESTING STANDARDS

If a licensee tests positive for a banned substance, the Board shall order that the licensee immediately cease any practice of occupational therapy, and immediately contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also immediately notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice.

The following drug testing standards shall apply to each licensee subject to drug testing:

1. Licensees shall be randomly drug tested at least 104 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly drug tested at least 50 times per year, and at any time as directed by the board.

2. Drug testing may be required on any day, including weekends and holidays.

3. Except as directed, the scheduling of drug tests shall be done on a random basis, preferably by a computer program.

4. Licensees shall be required to make daily contact as directed to determine if drug testing is required.

5. Licensees shall be drug tested on the date of notification as directed by the board.

6. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.

7. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.

8. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

9. Collection of specimens shall be observed.

10. Prior to vacation or absence, alternative drug testing location(s) must be approved by the board.

11. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

DISCIPLINARY GUIDELINES

I. INTRODUCTION

To establish consistency in disciplinary penalties for similar offenses on a statewide basis, the California Board of Occupational Therapy (Board) has adopted these uniform disciplinary guidelines for particular violations. This document, designed for use by attorney's administrative law judges, occupational therapists, occupational therapy assistants, others involved in the disciplinary process, and ultimately the Board, may be revised from time to time and shall be distributed to interested parties upon request.

These guidelines include general factors to be considered, probationary terms, and guidelines for specific offenses. The guidelines for specific offenses reference the applicable statutory and regulatory provision(s).

For purposes of this document, the term "license" includes the occupational therapy license and the occupational therapy assistant certificate. The terms and conditions of probation are divided into two general categories:

(1) Standard Conditions are those conditions of probation which will generally appear in all cases involving probation as a standard term and condition; and
(2) Optional Conditions are those conditions which address the specific circumstances of the case and require discretion to be exercised depending on the nature and circumstances of a particular case.

Except as provided in the Uniform Standards Related to Substance Abuse, the ~~The~~ Board recognizes that these recommended penalties and conditions of probation are merely guidelines and that mitigating or aggravating circumstances and other factors may necessitate deviations, as discussed herein. If there are deviations from the guidelines, the Board requests that the Administrative Law Judge hearing the matter include an explanation in the Proposed Decision so that the circumstances can be better understood and evaluated by the Board upon review of the Proposed Decision and before final action is taken. ~~Additional copies of this document may be obtained by contacting the Board at its office in Sacramento, California or from its web site at www.bot.ca.gov.~~

II. GENERAL CONSIDERATIONS

The Board requests that Proposed Decisions following administrative hearings include the following:
a. Specific code sections violated with their definitions.
b. Clear description of the violation.
c. Respondent's explanation of the violation if he/she is present at the hearing.

d. Findings regarding aggravation, mitigation, and rehabilitation where appropriate.
e. When suspension or probation is ordered, the Board requests that the disciplinary order include terms within the recommended guidelines for that offense unless the reason for departure from the recommended terms is clearly set forth in the findings and supported by the evidence.

Factors to be Considered - In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offense(s), or crime(s) under consideration.
2. Actual or potential harm to any consumer, client or the general public.
3. Prior disciplinary record.
4. Number and/or variety of current violations.
5. Mitigation evidence.
6. Rehabilitation evidence.
7. In the case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
8. Overall criminal record.
9. Time passed since the act(s) or offense(s) occurred.
10. Whether or not the respondent cooperated with the Board's investigation, other law enforcement or regulatory agencies, and/or the injured parties.
11. Recognition by respondent of his or her wrongdoing and demonstration of corrective action to prevent recurrence.

III. DEFINITION OF PENALTIES

Revocation: Loss of a license as the result of any one (1) or more violations of the Occupational Therapy Practice Act. Revocation of a license is permanent, unless the respondent takes affirmative action to petition the Board for reinstatement of his/her license and demonstrates to the Board's satisfaction that he/she is rehabilitated.

Suspension: Invalidation of a license for a fixed period of time, not to exceed one (1) year.

Stayed Revocation: Revocation of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.

Stayed Suspension: Suspension of a license, held in abeyance pending respondent's compliance with the terms of his/her probation.
Probation: A period during which a respondent's discipline is stayed in exchange for respondent's compliance with specified conditions relating to improving his/her conduct or preventing the likelihood of a recurrence of the violation.

IV. DISCIPLINARY GUIDELINES

The offenses are listed by statute number in the Business and Professions Code. The standard terms of probation as stated herein shall be included for all probations. The optional conditions of probation as stated herein are to be considered and imposed along with any other optional conditions if facts and circumstances warrant. The number(s) in brackets listed after each condition of probation refers to the conditions listed on pages ~~8-14~~ 15-22.

BUSINESS AND PROFESSIONS CODE SECTIONS – Occupational Therapy Practice Act

Section 2570.23: **Violation of 2570.3 - Unlicensed Person Engaging in Practice - Sanctions**

Applicant Maximum: Denial of application for a license
Applicant Minimum: Thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(a)(1),(2),or(3): **Unprofessional Conduct – Incompetence, Gross Negligence, Repeated Negligent Acts, Conviction of Practicing Medicine**

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#22 and #23]

Section 2570.28(a)(4): **Unprofessional Conduct – False Advertising**

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(a)(5): **Unprofessional Conduct – Discipline by Other Government Agency**

Maximum: Revocation
Minimum: Stayed revocation and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]

Section 2570.28(b): **Procuring a License by Fraud, Misrepresentation, Mistake**

Maximum: Revocation
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13]
b. Optional condition [#22]

Section 2570.28(c): **Violating Any Provision of the Occupational Therapy Practice Act or Regulations**

	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(d):		**False Statement on Application for License or Renewal**
	Maximum:	Revocation
	Minimum:	Stayed revocation, thirty (30) days suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(e):		**Conviction of Crime Substantially Related to License**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#25, #26]
Section 2570.28(f) or (g):		**Impersonating an Applicant or Acting as Proxy for Another in an Examination for Licensure, Impersonating a Licensee or Allowing Another Person to Use License**
	Maximum:	Revocation
	Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(h):		**Committing Fraud, Dishonest or Corrupt Act**
	Maximum:	Revocation
	Minimum:	Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(i):		**Committing Any Act Punishable as Sexually Related Crime**
	Maximum:	Revocation
	Minimum:	Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional Conditions [#15, #16, #23]
Section 2570.28(j):		**Using Excessive Force, Mistreating or Abusing Patient**

	Maximum:	Revocation
	Minimum:	Stayed revocation, ninety (90) days actual suspension and five (5) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional Conditions [#15, #16, #23]
Section 2570.28(k):		**Falsifying, Making Grossly Incorrect, Inconsistent, or Unintelligible Entries in Patient/Hospital Record**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional Conditions [#14, #17-#19, #21]
Section 2570.28(l):		**Changing the Prescription of Physician or Falsifying Verbal or Written Orders**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(m):		**Failing to Maintain Patient Confidentiality**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(n):		**Delegating Services that Require License to Unlicensed Person**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(o):		**Committing Act that would be Grounds for Denial under Section 480**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.28(p):		**Failing to Follow Infection Control Guidelines**

	Maximum:	Revocation
	Minimum:	Stayed revocation and one (1) year probation on the following conditions: a. Standard conditions [#1-#13]
Section 2570.29(a):		**Obtain, Possess, Administer to Self, Furnish or Administer to Others, Controlled Substance**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#19, #21]
Section 2570.29(b)(1)(2) or (3):		**Use Controlled Substance, Dangerous Drug, Alcohol in Manner Dangerous, Injurious to Self or Others**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#21]
Section 2570.29(c):		**Conviction of Crime Involving Controlled Substance, Dangerous Drug, Alcohol or Falsifying a Record Involving Same**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#21, 26]
Section 2570.29(d):		**Committed or Confined by Court for Intemperate Use of Controlled Substance, Dangerous Drug, Alcohol**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the following conditions: a. Standard conditions [#1-#13] b. Optional conditions [#14, #17-#21, #26]
Section 2570.29(e):		**Falsify, Make Grossly Incorrect, Inconsistent, or Unintelligible Entries in Hospital/Patient Record involving Controlled Substance or Dangerous Drug**
	Maximum:	Revocation
	Minimum:	Stayed revocation and three (3) years probation on the

following conditions:
a. Standard conditions [#1-#13]
b. Optional conditions [#14, #17-#19, #21]

GENERAL PROVISIONS OF BUSINESS AND PROFESSIONS CODE

Section 125.6: Discrimination by Licensee

Maximum: Revocation
Minimum: Stayed revocation and one (1) year probation on the following conditions:
a. Standard conditions [#1-#13]

Section 480 (a): Denial of Licenses

Maximum/Minimum: Denial of license

Section 480 (a): Denial of Licenses

Maximum/Minimum: Denial of license

Section 496: Subversion of Licensing Examinations or Administration of Examinations.

Maximum: Denial or revocation of license
Minimum: Stayed revocation, thirty (30) days actual suspension and three (3) years probation on the following conditions:
a. Standard conditions [#1-#13}
b. Optional condition [#22]

V. STANDARD CONDITIONS OF PROBATION
(to be included in all cases of probation)

1. Obey All Laws
Respondent shall obey all federal, state and local laws and regulations governing the practice of occupational therapy in California. Respondent shall submit, in writing, a full detailed account of any and all violations of the law to the Board within five (5) days of occurrence.

2. Compliance with Probation and Quarterly Reporting
Respondent shall fully comply with the terms and conditions of probation established by the Board and shall cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with probation. Respondent, within ten (10) days of completion of the quarter, shall submit quarterly written reports to the Board on a Quarterly Report of Compliance form obtained from the Board (Attachment A).

3. Personal Appearances
Upon reasonable notice by the Board, respondent shall report to and make personal appearances at times and locations as the Board may direct.

4. Notification of Address and Telephone Number Change(s)
Respondent shall notify the Board, in writing, within five (5) days of a change of residence or mailing address, of his/her new address and any change in work and/or home telephone numbers.

5. Tolling for Out-of-State Practice, Residence or Extension of Probation for In-State Non-Practice
In the event respondent should leave California to reside or to practice outside the State for more than thirty (30) days, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of departure and return. All provisions of probation other than the quarterly report requirements, examination requirements, and education requirements, shall be held in abeyance until respondent resumes practice in California. All provisions of probation shall recommence on the effective date of resumption of practice in California, and the period of probation shall be extended for the period of time respondent was out of state.

Unless by Board order, in the event respondent is not engaging in the practice of occupational therapy while residing in California, respondent shall notify the Board or its designee in writing within ten (10) days of the dates of cessation of practice and expected return to practice. All provisions of probation shall remain in effect, and the period of probation shall be extended for the period of time respondent was not engaged in the practice of occupational therapy as required by other employment requirement of this order.

6. Notification to Employer(s)
[uniform standard #3]
When currently employed, ~~or~~ applying for employment in any capacity, or contracted to provide occupational therapy services, ~~in any health care profession~~ Respondent shall ~~notify~~ ~~his/her~~ provide a copy of the Board's Decision to each employer, supervisor, or contractor ~~of the probationary status of respondent's license. This notification to the current employer shall occur~~ no later than the effective date of the Decision. Respondent shall notify any prospective ~~health care~~ employer, supervisor, or contractor of his/her probationary status with the Board prior to accepting such employment. This notification shall ~~be made by providing the employer or prospective employer with~~ include a copy of the Board's Accusation, Statement of Issues, Stipulated Settlement, or Disciplinary Decision (whichever applies).

The respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers, supervisors and contractors, and shall inform the Board in writing of the facility or facilities at which the person is providing occupational therapy services, the name(s) of the person(s) to whom the Board's decision was provided.

Respondent shall complete the required consent forms and sign an agreement with the employer and supervisor, or contractor, and the Board, to allow the Board to communicate with the employer and supervisor or contractor regarding issues including but not limited to the licensee's work status, attendance, performance, and on-going monitoring.

Respondent shall cause each ~~health care~~ employer and supervisor or contractor to submit quarterly reports to the Board. The report shall be on a form provided by the Board, and shall include a performance evaluation and such other information as may be required by the Board ~~(Attachment B)~~(Probation Report Form, rev. 07/2010).

Respondent shall notify the Board, in writing, within five (5) days of any change in employment status. Respondent shall notify the Board, in writing, within five (5) days if he/she is terminated from any occupational therapy or health care related employment with a full explanation of the circumstances surrounding the termination.

7. Employment Requirements and Limitations

During probation, respondent shall work in his/her licensed capacity in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, respondent shall not work for a registry or in any private duty position, except as approved, in writing, by the Board. Respondent shall work only on a regularly assigned, identified, and pre-determined work site(s) and shall not work in a float capacity except as approved, in writing, by the Board.

During probation, Respondent shall work in his or her capacity in the State of California. If respondent is unable to secure employment in his or her capacity, or his or her license is temporarily suspended, the period of probation shall be ~~tolled during that time~~ extended for that period of time.

8. Supervision Requirements

Respondent shall obtain ~~prior~~ approval from the Board~~,~~ when continuing or before commencing any employment, regarding the level of supervision provided to the respondent while employed as an occupational therapist or occupational therapy assistant.

Respondent shall not function as a supervisor during the period of probation except as approved, in writing, by the Board.

9. Continuing Education Requirements

Respondent shall complete continuing education directly relevant to the violation as specified by the Board. Continuing education shall be completed within a period of time designated by the Board, which timeframe shall be incorporated as a condition of this probation.

Continuing education shall be in addition to the professional development activities required for license renewal. The Board shall notify respondent of the course content and number of contact hours required. Within thirty (30) days of the Board's written notification of the assigned coursework, respondent shall submit a written plan to comply with this requirement. The Board shall approve such plan prior to enrollment in any course of study.

Failure to satisfactorily complete the required continuing education as ~~scheduled~~ designated or failure to complete same no later than ~~100 days prior to the termination of probation~~ one year from the date of the Board's written notification shall constitute a violation of probation. Respondent is responsible for all costs of such continuing education. Upon successful completion of the course(s), respondent shall cause the instructor to furnish proof to the Board within thirty (30) days of course completion.

10. Maintenance of Valid License

Respondent shall, at all times while on probation, maintain an active current license with the Board including any period during which license is suspended or probation is tolled.

11. Cost Recovery Requirements
Where an order for recovery of costs is made, respondent shall make timely payment as directed in the Board's Decision pursuant to Business and Professions Code section 125.3. Failure to make payments in accordance with any formal agreement entered into with the Board or pursuant to any Decision by the Board shall be considered a violation of probation.

The Board may conditionally renew or reinstate, for a maximum of one (1) year, the license of any respondent who demonstrates financial hardship. Respondent shall enter into a formal agreement with the Board to reimburse the unpaid costs within that one (1) year period.

Except as provided above, the Board shall not renew or reinstate the license of any respondent who has failed to pay all the costs as directed in a Decision.

12. Violation of Probation
If respondent violates probation in any respect, the Board, after giving respondent notice and opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If an accusation or a petition to revoke probation is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended, and respondent shall comply with all probation conditions, until the matter is final.

13. Completion of Probation
Upon successful completion of probation, respondent's license will be fully restored.

VI. OPTIONAL CONDITIONS OF PROBATION

14. Examination by a Physician
Within sixty (60) days of the effective date of the Decision, respondent shall submit to a physical examination by a physician and surgeon of his/her choice who meets minimum criteria established by the Board. The physician and surgeon ~~must~~ shall be licensed in California and Medical Board Certified in Family Practice, Internal Medicine or a related specialty. The purpose of the examination shall be to determine respondent's ability to safely perform all professional duties with safety to self and to the public. Respondent shall provide the examining physician and surgeon with a copy of the Board's Disciplinary Order prior to the examination. Cost of such examination shall be paid by respondent.

Respondent shall cause the physician and surgeon to complete a written medical report to be submitted directly to the Board within ninety (90) days of the effective date of the Decision. If the examining physician and surgeon finds that respondent is not physically fit to practice or can only practice with restrictions the ~~examining~~ physician shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the ~~examining~~ physician~~'s~~ and surgeon's determination of unfitness to practice and shall order the respondent to cease practice or place restrictions on respondent's practice. ~~licensed activities as a condition of probation.~~ Respondent shall comply with ~~this condition~~ any order to cease practice or restriction of his or her practice until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent in writing. ~~Respondent shall document compliance in the manner required by the Board.~~

15. Psychological Evaluation
Within sixty (60) days of the effective date of the Decision, respondent shall submit to a psychiatric~~/~~ or

psychological evaluation. Within twenty (20) days of the effective date of the Decision, Respondent shall submit to the Board the name of one or more proposed evaluators for prior approval by the Board to conduct a psychiatric or psychological evaluation. The evaluation shall be performed by a ~~psychiatrist~~ physician and surgeon licensed in California and ~~Medical~~ Board Certified in Psychiatry, or by a clinical psychologist licensed in California. This evaluation shall be for the purpose of determining respondent's current mental, psychological and emotional fitness to safely perform all professional duties with safety to self and the public. Respondent shall provide the evaluator with a copy of the Board's Disciplinary Order prior to the evaluation. Cost of such evaluation shall be paid by respondent.

Respondent shall cause the evaluator to submit to the Board a written psychological report concerning respondent's status and progress as well as such other information as may be requested by the Board. This report shall be submitted within ninety (90) days from the effective date of the Decision.

If the evaluator finds that respondent is not psychologically fit to practice safely or can only practice safely with restrictions, the evaluator shall orally notify the Board within one (1) working day, and then notify the Board, in writing, within five (5) working days. The Board shall notify the respondent in writing of the evaluator's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance in the manner required by the Board.

If the evaluator finds that psychotherapy is required, respondent shall participate in a therapeutic program at the Board's discretion. Cost of such therapy shall be paid by respondent.

16. Psychotherapy

Within sixty (60) days of the effective date of the Decision, respondent shall submit to the Board the name of one (1) or more proposed therapists for prior approval. Respondent shall participate in ongoing psychotherapy with a California licensed or legally registered mental health professional approved by the Board. ~~Upon~~ Within ten (10) days of receiving notification of approval by the Board, Respondent shall commence psychotherapy. Respondent shall provide the therapist with a copy of the Board's Disciplinary Order no later than the first counseling session. Counseling shall be at least once a week unless otherwise determined by the Board. Respondent shall continue in such therapy at the Board's discretion. Cost of such therapy shall be paid by respondent.

Respondent shall cause the therapist to submit to the Board a written report concerning respondent's psychotherapy status and progress as well as such other information as may be requested by the Board. The initial psychotherapy report shall be submitted within ninety (90) days from the effective date of the Decision. Respondent shall cause the therapist to submit quarterly written reports to the Board concerning respondent's fitness to practice, progress in treatment and to provide such other information as may be required by the Board.

If the therapist finds that respondent is not fit to practice safely, or can only practice safely with restrictions, the therapist shall notify the Board, in writing, within five (5) working days. The Board shall notify respondent in writing of the therapist's determination of unfitness to practice and shall order the respondent to cease or restrict licensed activities as a condition of probation. Respondent shall comply with this condition until the Board is satisfied of respondent's fitness to practice safely and has so notified respondent. Respondent shall document compliance with this condition in the manner required by the Board.

17. Clinical Diagnostic Evaluation

Within twenty (20) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

~~Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, his or her license shall be automatically suspended for minimum of one month pending the results of a clinical diagnostic evaluation. During such time, the Respondent shall submit to random drug testing at least two (2) times per week.~~

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of occupational therapy, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of occupational therapy for minimum of one month pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent~~'s license~~ shall ~~remain suspended~~ not practice occupational therapy until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any ~~restrictions or recommendations~~ terms or conditions made by the Board as a result of the clinical diagnostic evaluation.

17. Rehabilitation Program

Within thirty (30) days of the effective date of the Decision, respondent shall enter a rehabilitation and monitoring program specified by the Board. Respondent shall successfully complete such treatment contract as may be recommended by the program and approved by the Board.

Components of the treatment contract shall be relevant to the violation and to the respondent's current status in recovery or rehabilitation. The components may include, but are not limited to: restrictions on practice and work settings, random bodily fluid or other matter testing, abstention from drugs and alcohol, use of work site monitors, participation in chemical dependency rehabilitation programs or groups, psychotherapy, counseling, psychiatric evaluations and other appropriate rehabilitation or monitoring programs. Cost for participation in this program shall be paid by respondent.

18. Chemical Dependency Support/Recovery Groups

Within five (5) days of the effective date of the Decision, respondent shall begin attendance at a chemical dependency support group (e.g., Alcoholics Anonymous, Narcotics Anonymous), and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

XX. Facilitated Support Group Meetings

Within thirty (30) days of the effective date of the Decision, respondent shall begin attendance at a facilitated support group, and continue as ordered by the Board or its designee. Verified documentation of attendance shall be submitted by respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

When determining the frequency of required support group meeting attendance, the board shall give consideration to the following:

- the licensee's history;
- the documented length of sobriety/time that has elapsed since substance use;
- the recommendation of the clinical evaluator;
- the scope and pattern of use;
- the licensee's treatment history; and,
- the nature, duration, and severity of substance abuse.

Group Meeting Facilitator Qualifications and Requirements:

1. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The meeting facilitator must not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The facilitator shall report any unexcused absence within 24 hours.

19. Abstain from Controlled Substances

Respondent shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs as defined in sections 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness or condition. If under such prescription, Respondent shall cause to have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall completely abstain from the ~~use~~ intake of alcoholic beverages during the period of probation.

21. Submit Biological Fluid or Other Matter Samples [uniform standard #4]
Respondent shall immediately submit to random and directed ~~biological fluid~~ alcohol and/or drug testing at respondent's cost, upon request by the Board or its designee. The Respondent shall be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and ~~at~~ minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term. ~~There will be no confidentiality in the test results; positive test results will be immediately reported to the Board and the respondent's current employer.~~ If Respondent tests positive for a banned substance, Respondent~~'s license~~ shall be ~~automatically suspended~~ ordered by the Board to immediately cease any practice of occupational therapy, and may not practice unless and until notified by the Board. Respondent shall make daily contact as directed by the Board to determine if he or she must submit to drug testing. Respondent shall submit to his or her drug test on the same day that he or she is notified that a test is required. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

22. Take and Pass the Licensure Examination
Respondent shall take and pass the licensure examination currently required of new applicants for the license possessed by respondent. Respondent shall pay the established examination fees.

As a condition precedent to reinstatement of a license, respondent shall take and pass the licensure examination currently required of new applicants prior to resuming practice. Respondent shall pay the established examination and licensing fees.

All standard terms or other terms of probation shall be tolled until the respondent has successfully passed the licensure examination and notice of licensure has been mailed to respondent by the Board.

23. Worksite Monitor [uniform standard #7]
Respondent shall submit the name of the proposed worksite monitor within 20 days of the effective date of the Decision. Respondent shall complete any required consent forms and sign an agreement with the worksite monitor and the Board regarding the Respondent and the worksite monitor's requirements and reporting responsibilities. Once a worksite monitor is approved, Respondent may not practice unless the monitor is present at the worksite. If the worksite monitor terminates the agreement with the Board and the Respondent, the Respondent shall not resume practice until another worksite monitor is approved by the Board.

Reporting by the worksite monitor to the board shall be as follows:
Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature;

worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

~~23.~~24. Restriction on Licensed Practice
Respondent shall practice only with a specified client population, in a specified practice setting, or engage in limited occupational therapy services. These restrictions shall be specifically defined in the Decision and be appropriate to the violation. Respondent shall be required to document compliance in a manner required by the Board.

~~24.~~25. Suspension
Respondent is suspended from the practice of occupational therapy for _____ days beginning on the effective date of the Decision. Respondent shall be responsible for informing his or her employer of the Board's decision, the reasons for the length of suspension. ~~Prior to the lifting of the actual suspension of license, the Board shall receive pertinent documentation confirming that respondent is safe to return to practice under specific terms and conditions as determined by the Board.~~

~~25.~~26. Restitution
Within _____ days of the effective date of this Decision, respondent shall make restitution to _____ in the amount of $_____ and shall provide the Board with proof from _____ attesting that the full restitution has been paid. In all cases, restitution shall be made before the termination of probation.

~~26.~~27. Criminal Probation Reports
Respondent shall provide the Board with a copy of the standard conditions of the criminal probation, copies of all criminal probation reports and the name of his/her probation officer.

~~27.~~28. Relinquish License and Wall Certificate
Respondent shall relinquish and shall forward or deliver the license to practice and the wall certificate to the Board within ten (10) days of the effective date of the Decision and order.

~~28.~~29. Notification to Clients/Cessation of Practice
In orders that provide for a cessation or suspension of practice, respondent shall comply with procedures provided by the Board regarding notification to, and management of, clients.

XX. Petition for Modification

"Petition" as used in this standard is a request made to the Board's designee, and not under the Administrative Procedure Act.

The licensee shall demonstrate that he or she has met the following criteria before being granted a request to modify a practice restriction ordered by the Board:
1. Demonstrated sustained compliance with current recovery program.

2. Demonstrated the ability to practice safely as evidenced by current work site reports, evaluations, and any other information relating to the licensee's substance abuse.
3. Negative alcohol and drug screening reports for at least six (6) months, two (2) positive worksite monitor reports, and complete compliance with other terms and conditions of the program.

VII. REHABILITATION CRITERIA

When considering the denial of an occupational therapy practitioner license under section 480 of the Business and Professions Code, the Board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial, which also could be considered as grounds for denial under section 480 of the Business and Professions Code.
(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
(5) Evidence, if any, of rehabilitation submitted by the applicant.

When considering the suspension or revocation of the license of an occupational therapy practitioner on the grounds that the person licensed has been convicted of a crime, the Board, in evaluating the rehabilitation of such person and his/her present eligibility for a license, shall consider the following criteria:

(1) The nature and severity of the act(s) or offense(s).
(2) Total criminal record.
(3) The time that has elapsed since commission of the act(s) or offense(s).
(4) The extent to which the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
(5) If applicable, evidence of expungement proceedings pursuant to section 1203.4 of the Penal Code.
(6) Evidence, if any, of rehabilitation submitted by the licensee.

VIII. PETITION FOR REINSTATEMENT/REDUCTION IN PENALTY

When considering a petition for reinstatement of the license or a petition for reduction in penalty, the Board shall evaluate evidence of rehabilitation submitted by the petitioner, considering those criteria specified in section VII. above.

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND CCR SECTION 4123 AND ADD SECTION 4125.

The following are attached for review:

- Notice
- Proposed Text
- Initial Statement of Reasons
- Modified Text (Noticed May 24th)
- Public comments

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 present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, Hearing Room – First Floor, 2005 Evergreen Street, Sacramento, CA 95815, on February 11, 2010, at 10:00 am. Written comments, including those sent by mail, facsimile, or e-mail 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 8, 2010, or must be received by the Board at the hearing.

The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the action substantially as described below or may modify such action if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified action 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 action.

Authority and Reference: Pursuant to the authority vested by section 2570.20 of the Business and Professions Code (BPC), and to implement, interpret or make specific section 2570.10, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations (CCR) as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Amend CCR Section 4123(a) and add Section 4123(a)(2):

Existing law, BPC 2570.5, allows occupational therapist and occupational therapy assistant applicants to apply for a limited permit, which allows the practice of occupational therapy while waiting to take the required examination for the first time or awaiting the examination results.

However, if that applicant does not take the examination within the designated timeframe or fails the examination, all practice privileges under this section cease. Currently, the applicant can decide when, and if, the Board is notified of their examination results. This amendment to Section 4123(a) requires an applicant to request their examination score be forwarded from the National Board for Certification in Occupational Therapy, Inc. (NBCOT) to the Board.

The proposed language in Section 4123(a)(2) requires the applicant to provide the Board with evidence that he/she has requested NBCOT provide their examination score results to the Board before a limited permit may be issued to them. The addition of the proposed Section 4123(a)(2) requires renumbering of the remaining subsections for continuity.

Add Section CCR Section 4125:

Existing law, BPC 2570.18 specifies that a person shall not represent to the public by title, by description of services, methods, or procedures, or use certain specified professional abbreviations, unless licensed by the Board.

The proposed language would clarify that the use of specified initials or titles, requires current licensure as an occupational therapist or occupational therapy assistant and current registration with NBCOT.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

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

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

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

THE FOLLOWING STUDIES/RELEVANT DATA WERE RELIED UPON

See the INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW above.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

There is no impact on private business or representative private persons, except to clarify licensee representations that demonstrate professional qualifications of occupational therapy practitioner(s) to be in a manner inconsistent with the public health, safety or welfare. The only impact on private business or representative private persons is beneficial.

EFFECT ON HOUSING COSTS: None

EFFECT ON SMALL BUSINESS:

The Board has determined that the proposed regulation would not impact small businesses because the regulations do not regulate, benefit or harm small businesses and do not require reports or any other compliance activities of small businesses.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed, or be as effective as and less burdensome to affected private persons than the proposal described in this Notice.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION:

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained from our website as listed below or upon written request from the contact person listed below.

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

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

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

CONTACT PERSON:

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

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (TEL) or (916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294 (TEL) or (916) 263-2701 (FAX)
cbot@dca.ca.gov

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

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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

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

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

§ 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.
~~(2)~~ (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.
~~(3)~~ (4) The limited permit holder must immediately notify the Board of the results of the examination.
~~(4)~~ (5) he limited permit holder must provide the Board the name, address and telephone number of their employer and identify the name and license number of their supervising occupational therapist (OT). Any change to employer or supervising OT must be provided to the Board, in writing, within 10 days of the change.
(b) 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: Section 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.

§ 4125. Representation

(a)(1) Unless holding a licensed to practice as an occupational therapist, a person may not use the professional abbreviations "O.T." or "O.T./L.," or refer to themselves as an "Occupational Therapist" or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.
(2) Unless holding a license to practice as an occupational therapist, and currently in good standing with the National Board for Certification in Occupational Therapy (NBCOT) , a person may not use the professional abbreviations "O.T.R.," or "O.T.R./L.," or refer to themselves as "Occupational Therapist, Registered," or "Registered Occupational Therapist" or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California and currently registered with NBCOT.
(b)(1) Unless holding a license to practice as an occupational therapy assistant, a person may not use the professional abbreviations "O.T.A." or "O.T.A./L," or refer to themselves as an "Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.
(2) Unless holding a license to practice as an occupational therapy assistant and currently in good standing with NBCOT, a person may not use the professional abbreviations "C.O.T.A." or "C.O.T.A./L.," or refer to themselves as "Certified Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California and currently registered with NBCOT.
(c) Pursuant to section 2570.18, the unauthorized representation by an occupational therapist or an occupational therapy assistant constitutes an unfair business practice under Section 17200, false and misleading advertising under Section 17500, and a violation of the Ethical Standards of Practice.

Note: Authority cited: Section 2570.20, Business and Professions Code.
Reference: Sections 2570.3, 2570.18, 17200, and 17500, Business and Professions Code.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Limited Permit and Representation

Sections Affected:

Title 16, Division 39, California Code of Regulations, Sections 4123(a) and 4123(a)(2), and the addition of Section 4125.

SPECIFIC PURPOSE OF THE REGULATIONS:

Section 4123:

Existing law allows the issuance of a limited permit to any person who meets the qualifications to be admitted to the licensure examination and is waiting to take the first available examination. The proposed amendments will require the applicant to provide proof to the Board that they have requested the National Board for Certification in Occupational Therapy, Inc. (NBCOT) to notify the Board of the applicant's score, prior to the issuance of a limited permit.

Section 4125:

Existing law prohibits a person from representing to the public by title, by description of services, methods, or procedures, or otherwise, that a person is permitted to practice occupational therapy in this state, unless authorized to practice by the Board. The addition of proposed Section 4125 will clarify how the holders of unrestricted licenses to practice as occupational therapists or occupational therapy assistants may refer to themselves, using the terms OTR and OTR/L found in BPC Section 2570.18. In addition, holders of unrestricted

FACTUAL BASIS/NECESSITY

The amendment to §4123(a) will require an applicant for a limited permit to request NBCOT to provide his/her examination score directly to the Board, thereby eliminating any delay that may be caused by failure of the applicant to notify the Board in a timely manner of failing to take the examination timely or failing to take the examination.

The addition of section 4123(a)(2) will require the applicant to submit evidence to the Board to prove that he/she has already requested that NBCOT send the examination results directly to the Board before a limited permit may be issued.

Existing law specifies that as person shall not represent to the public by title, by description of services, methods, or procedures, or use certain specified professional titles or abbreviations, unless licensed by the Board.

The proposed language would clarify that the use of specified initials or titles, requires current licensure as an occupational therapist or occupational therapy assistant and current registration with NBCOT. (Please note that the professional references listed in the new CCR Section 4125(a)(2) and (b)(2), are registered trademarks of NBCOT..

UNDERLYING DATA:

It has been the experience of the Board Staff that some applicants for licensure, who do not pass the NBCOT certification examination, have failed, refused or neglected to timely notify the Board of that examinant failure. If the Board is unaware of the failure to pass the examination, the Board would be unable to notify the applicant that the limited permit is cancelled.

BUSINESS IMPACT:

This regulation will have no economic impact on business.

SPECIFIC TECHNOLOGIES OR EQUIPMENT:

These regulatory changes do no 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 propose regulatory changes.

CALIFORNIA BOARD OF OCCUPATIONAL THERAPY

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

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

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

§ 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.
~~(2)~~ (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.
~~(3)~~ (4) The limited permit holder must immediately notify the Board of the results of the examination.
~~(4)~~ (5) The limited permit holder must provide the Board the name, address and telephone number of their employer and identify the name and license number of their supervising occupational therapist (OT). Any change to employer or supervising OT must be provided to the Board, in writing, within 10 days of the change.
(b) 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: Section 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.

§ 4125. Representation

(a)(1) Unless ~~holding a~~ licensed ~~to practice~~ as an occupational therapist by the Board, a person may not use the professional abbreviations "O.T." or "O.T./L.," or refer to themselves as an "Occupational Therapist" or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.
(2) Unless ~~holding a~~ licensed ~~to practice~~ as an occupational therapist by the Board, and currently ~~in good standing~~ registered with the National Board for Certification in Occupational Therapy (NBCOT) , a person may not use the professional abbreviations "O.T.R.," or "O.T.R./L.," or refer to themselves as "Occupational Therapist, Registered," or "Registered Occupational Therapist" or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California ~~and currently registered with NBCOT~~.
(b)(1) Unless ~~holding a~~ licensed ~~to practice~~ as an occupational therapy assistant, a person may not use the professional abbreviations "O.T.A." or "O.T.A./L," or refer to themselves as an "Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.
(2) Unless ~~holding a~~ licensed ~~to practice~~ as an occupational therapy assistant and currently ~~in good standing~~ registered with NBCOT, a person may not use the professional abbreviations "C.O.T.A." or "C.O.T.A./L.," or refer to themselves as "Certified Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California ~~and currently registered with NBCOT~~.
(c) Pursuant to section 2570.18, the unauthorized representation by an occupational therapist or an occupational therapy assistant constitutes an unfair business practice under Section 17200, false and misleading advertising under Section 17500, and a violation of the Ethical Standards of Practice.

Note: Authority cited: Section 2570.20, Business and Professions Code. Reference: Sections 2570.3, 2570.18, 17200, and 17500, Business and Professions Code.

January 28, 2010

California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, California 95815

Re: PROPOSED AMENDED REGULATORY LANGUAGE - Add Section CCR Section 4125

Dear California Board of Occupational Therapy,

Thank you for the opportunity to provide written comments regarding the proposed amended regulatory language under Title 16, Division 39 in the California Code of Regulations (Add CCR Section 4125). The Occupational Therapy Association of California (OTAC) opposes the proposed regulatory language in this section because it is not clear that the regulation appropriately implements the underlying statute (2570.18).

We are willing to work with CBOT to address our concerns with the proposed regulation. Thank you for providing the Occupational Therapy Association of California with the opportunity to provide written comments on the proposed amended regulations. We look forward to meeting with you in the near future.

Sincerely,

Shawn Phipps, MS, OTR/L
President
Occupational Therapy Association of California
pres@otaconline.org

AOTA The American Occupational Therapy Association, Inc.

Occupational Therapy: Living Life to its Fullest

January 28, 2010

VIA EMAIL to cbot@dca.ca.gov
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, California 95815

RE: Proposed Amended Regulatory Language – Add CCR Section 4125

Dear Board Members:

On behalf of the American Occupational Therapy Association, Inc. (AOTA), and its 3,200 members in California, I am submitting comments on the proposed amended regulatory language that would add Section 4125 to the California Code of Regulations.

The new section goes beyond the intent of the existing law and would empower the California Board of Occupational Therapy to enforce the private trademarks held by a private credentialing organization. Our view is that the underlying statute (2570.8) does not support the addition of this provision and that private trademarks should not be protected by the Board through state regulation. AOTA is opposed to adding this language and respectfully requests that the California Board of Occupational Therapy withdraw the proposed addition of Section 4125 from further consideration.

We understand the concern about the professional abbreviations. We believe that the Board does have authority to take action against unlicensed individuals that use professional abbreviations with the intent to represent that they practice or are authorized to practice occupational therapy and we do not believe that the Board should enforce a private trademark.

We believe that the best solution would be to delete references to OTR and COTA from the California Occupational Therapy Practice Act. To avoid confusion and inappropriate use of the Board to enforce the conditions of use of a private federal trademark, we would support legislation to amend the practice act as follows:

> ~~Strikethrough~~ = Suggested Text to be Deleted
> Underline = Suggested Text to be Added
>
> 2570.18. (a) A person shall not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.
>
> (b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.," ~~"O.T.R.,"~~ or ~~"O.T.R./L.,"~~ "OT/L" or "Occupational Therapist," or "Licensed Occupational Therapist ~~Registered~~," or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.

(c) Unless licensed to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations "O.T.A.," "O.T.A/L.," ~~"C.O.T.A.," "C.O.T.A./L.,"~~ or "Occupational Therapy Assistant," "Licensed Occupational Therapy Assistant," or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.

(d) The unauthorized practice or representation as an occupational therapist or as an occupational therapy assistant constitutes an unfair business practice under Section 17200 and false and misleading advertising under Section 17500.

We respectfully request that the Board submit these amendments to the Department of Consumer Affairs for inclusion in the Department's omnibus legislation as a technical amendment.

If the board wishes to proceed with the addition of Section 4125, we suggest the following amendments to the proposed text:

~~Strikethrough~~ = Suggested Text to be Deleted

§ 4125. Representation
(a) ~~(1)~~ Unless holding a licensed to practice as an occupational therapist, a person may not use the professional abbreviations "O.T." or "O.T./L.," or refer to themselves as an "Occupational Therapist" or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

~~(2) Unless holding a license to practice as an occupational therapist, and currently in good standing with the National Board for Certification in Occupational Therapy (NBCOT), a person may not use the professional abbreviations "O.T.R.," or "O.T.R./L.," or refer to themselves as "Occupational Therapist, Registered," or "Registered Occupational Therapist" or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California and currently registered with NBCOT.~~

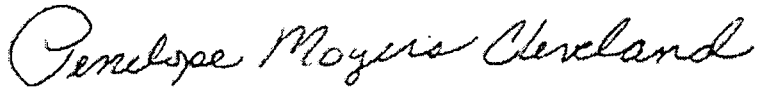
(b) ~~(1)~~ Unless holding a license to practice as an occupational therapy assistant, a person may not use the professional abbreviations "O.T.A." or "O.T.A./L," or refer to themselves as an "Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

~~(2) Unless holding a license to practice as an occupational therapy assistant and currently in good standing with NBCOT, a person may not use the professional abbreviations "C.O.T.A." or "C.O.T.A./L.," or refer to themselves as "Certified Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California and currently registered with NBCOT.~~

(c) Pursuant to section 2570.18, the unauthorized representation by an occupational therapist or an occupational therapy assistant constitutes an unfair business practice under Section 17200, false and misleading advertising under Section 17500, and a violation of the Ethical Standards of Practice.

Thank you for the opportunity to share our thoughts with the Board regarding the proposed regulatory language to add Section 4125 to the California Code of Regulations. We would be happy to discuss our concerns further with the Board if that would be helpful.

Sincerely,



Penelope A. Moyers Cleveland, EdD, OTR/L, BCMH, FAOTA
President
American Occupational Therapy Association

cc: Shawn Phipps, MS, OTR/L, President, Occupational Therapy Association of California

The American Occupational Therapy Association, Inc.

Occupational Therapy: Living Life to its Fullest

June 7, 2010

VIA EMAIL to cbot@dca.ca.gov
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, California 95815

RE: Proposed Amended Regulatory Language – Add CCR Section 4125 – Proposed Modified Text

Dear Board Members:

On behalf of the American Occupational Therapy Association, Inc. (AOTA), and its 3,200 members in California, I am submitting comments on the proposed amended regulatory language that would add Section 4125 to the California Code of Regulations. These comments are being sent in response to the notice dated May 24, 2010 regarding the availability of the modified proposed text.

Our view is that the modified text does not fully address the concerns raised in AOTA's previous comment letter to the Board dated January 28, 2010. (Attached)

AOTA believes that the new section with modified text still goes beyond the intent of the existing law and would inappropriately empower the California Board of Occupational Therapy to enforce the private trademarks held by a private credentialing organization. Our view is that the underlying statute (2570.8) does not support the addition of this provision and that private trademarks should not be protected by the Board through state regulation.

The issue addressed in this letter is whether the proposed amendment to the regulations would be an improper exercise of California's sovereign police powers. "The rulemaking authority of an agency is circumscribed by the substantive provisions of the law governing the agency." *Environmental Protection Information Center v. California Dep't of Forestry*, 43 Cal. App.4th 1011, 1022,50 Cal. Rptr.2d 892, 899 (1996) (quoting *Physicians & Surgeons Laboratories, Inc. v. Dep't of Health Services* 6 Cal.App.4th 968, 982, 8 Cal.Rptr.2d 565 (1992). Accordingly, agency regulations which alter or amend the statute or enlarge or impair the scope of the legislative mandate are void. *Environmental Protection*, 43 Cal. App.4th at 1022,50 Cal. Rptr.2d at 899. In determining whether a regulation enlarges or impairs a legislative mandate, courts examine the legislative history. ***Cooper v. Swoap***, 11 Cal.3d 856, 866-72, 524 P.2d 97, 102-07 (1974).

While it may appear that enforcing the private trademark protects the consumer of occupational therapy services, the fact is enforcement of private trademarks directly undermines the legislative purpose of the California licensure statute—to move away from trademarks as professional

The American Occupational Therapy Association, Inc. | 4720 Montgomery Lane Bethesda, MD 20814-3425 | 301-652-2682 301-652-7711 Fax | 800-377-8555 TDD www.aota.org

identification.

One purpose of the adoption of the California licensure statute was to make the process clear and simple for a consumer seeking to identify a licensed occupational therapist or licensed occupational therapy assistant. Any consumer in California today need only contact the California Board to determine if a practitioner is authorized to practice. If a consumer seeks to make a complaint about a therapist, he or she knows to call the California Board and determine if the practitioner has met the one requirement to practice in California: to have a license.

The licensure system was clearly adopted to replace the old trademark system. To adopt the proposed amended regulation would be taking a step backwards and would result in confusion for the public about the requirements to practice. The statutory requirements for licensure do not include the requirements which NBCOT imposes to use the O.T.R. and C.O.T.A. trademarks. Since the NBCOT requirements are not licensure requirements, making reference to them in licensure regulations would create confusion in the minds of the consumer as to whether the O.T.R. (or C.O.T.A.) is a requirement to practice in California. The licensure statute simplifies the process for consumers by making licensure the requirement to practice. Accordingly, state enforcement of NBCOT's or any other private entities trademark is directly contrary to the legislative purpose of the licensure statute.

AOTA respects the Board's intent to protect the public but believes this language is not helpful to that purpose.

Further, we are concerned that this new provision will unnecessarily add to the Board's workload and will add unnecessarily to the costs of the enforcement process. We do not believe that the California Board of Occupational Therapy should use its limited financial resources to enforce the private trademarks held by a private credentialing organization.

AOTA is opposed to adding this language and respectfully requests that the California Board of Occupational Therapy withdraw the proposed addition of Section 4125 including the modified text from further consideration.

We understand the concern about the professional abbreviations. We believe that the Board does have authority to take action against unlicensed individuals that use professional abbreviations with the intent to represent that they practice or are authorized to practice occupational therapy and we do not believe that the Board should enforce a private trademark.

We believe that the best solution would be to delete references to O.T.R. and C.O.T.A. from the California Occupational Therapy Practice Act. To avoid confusion and inappropriate use of the Board to enforce the conditions of use of a private federal trademark, we would support legislation to amend the practice act as follows:

~~Strikethrough~~ = Suggested Text to be Deleted
Underline = Suggested Text to be Added

2570.18. (a) A person shall not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the person is authorized to practice occupational therapy in this state, unless authorized to practice occupational therapy under this chapter.

(b) Unless licensed to practice as an occupational therapist under this chapter, a person may not use the professional abbreviations "O.T.," ~~"O.T.R.,"~~ or ~~"O.T.R./L.,"~~ "OT/L" or "Occupational Therapist," or "Licensed Occupational Therapist ~~Registered~~," or any other words, letters, or symbols with the intent to represent that the person practices or is authorized to practice occupational therapy.

(c) Unless licensed to assist in the practice of occupational therapy as an occupational therapy assistant under this chapter, a person may not use the professional abbreviations "O.T.A.," "O.T.A/L.," ~~"C.O.T.A.," "C.O.T.A./L.,"~~ or "Occupational Therapy Assistant," "Licensed Occupational Therapy Assistant," or any other words, letters, or symbols, with the intent to represent that the person assists in, or is authorized to assist in, the practice of occupational therapy as an occupational therapy assistant.

(d) The unauthorized practice or representation as an occupational therapist or as an occupational therapy assistant constitutes an unfair business practice under Section 17200 and false and misleading advertising under Section 17500.

We respectfully request that the Board submit these amendments to the Department of Consumer Affairs for inclusion in the Department's omnibus legislation as a technical amendment.

If the board wishes to proceed with the addition of Section 4125, we suggest the following amendments to the modified proposed text:

~~**BOLD Strikethrough**~~ = Suggested Text to be Deleted

§ 4125. Representation

(a)~~(1)~~ Unless ~~holding a~~ licensed ~~to practice~~ as an occupational therapist by the Board, a person may not use the professional abbreviations "O.T." or "O.T./L.," or refer to themselves as an "Occupational Therapist" or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

~~(2) Unless holding a licensed to practice as an occupational therapist by the Board, and currently in good standing registered with the National Board for Certification in Occupational Therapy (NBCOT), a person may not use the professional abbreviations "O.T.R.," or "O.T.R./L.," or refer to themselves as "Occupational Therapist, Registered," or "Registered Occupational Therapist" or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California and currently registered with NBCOT.~~

(b)~~(1)~~ Unless ~~holding a~~ licensed ~~to practice~~ as an occupational therapy assistant, a person may not use the professional abbreviations "O.T.A." or "O.T.A./L." or refer to themselves as an "Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means with the intent to represent that the person practices or is authorized to practice occupational therapy in California.

~~(2) Unless holding a licensed to practice as an occupational therapy assistant and currently in good standing registered with NBCOT, a person may not use the professional abbreviations "C.O.T.A." or "C.O.T.A./L.," or refer to themselves as "Certified Occupational Therapy Assistant," or use any other words, letters, symbols, manner, or means, with the intent to represent that the person practices or is authorized to practice occupational therapy in California and currently registered with NBCOT.~~

(c) Pursuant to section 2570.18, the unauthorized representation by an occupational therapist or an occupational therapy assistant constitutes an unfair business practice under Section 17200, false and misleading advertising under Section 17500, and a violation of the Ethical Standards of Practice.

Thank you for the opportunity to share our thoughts with the Board regarding the proposed regulatory language to add Section 4125 to the California Code of Regulations. We would be happy to discuss our concerns further with the Board. If that would be helpful, please contact AOTA's Director of State Affairs Chuck Willmarth at 301/652-6611 ext 2019 or via email at cwillmarth@aota.org.

Sincerely,

Penelope A. Moyers Cleveland, EdD, OTR/L, BCMH, FAOTA
President
American Occupational Therapy Association

cc:

Brian J. Stiger, Director, Department of Consumer Affairs

Senator Gloria Negrete McLeod, Chair, Senate Business, Professions and Economic Development Committee

Assemblymember Mary Hayashi, Chair, Assembly Business, Professions and Consumer Protection Committee

Shawn Phipps, MS, OTR/L, President, Occupational Therapy Association of California

CONSIDERATION AND ADOPTION OF PROPOSED REGULATORY LANGUAGE TO AMEND CCR SECTIONS 4150, 4151, 4152.1, 4153, 4154, AND 4155.

The following are attached for review:

- Notice
- Proposed Text
- Initial Statement of Reasons
- Modified Text (Noticed May 24th)
- Public comments

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 present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Department of Consumer Affairs, in the Hearing Room, First Floor, 2005 Evergreen Street, Sacramento, CA 95815 at10:15 am, on February 11, 2010.

Written comments, including those sent by mail, facsimile, or e-mail 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 8, 2010, or must be received by the Board at the hearing. 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 section 2570.20 of the Business and Professions (B&P) Code, and to implement, interpret or make specific B&P Code Sections 2570.2 and 2570.3, the Board is proposing to revise Division 39, Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law requires an occupational therapist to complete post professional education and supervised on-the-job training in order to provide treatment to clients in the advanced practice areas of hand therapy, physical agent modalities, or swallowing assessment, evaluation, and intervention. Advanced practice approval is granted once a licensee demonstrates competence to the Board.

Amend Section 4150(c). The proposed language amends §4150(c) by modifying the current definition of post-professional education "contact hours" from fifty (50) minutes to sixty (60) minutes by making this definition consistent with current continuing competency activities and industry-accepted standards.

Amend Section 4150 by adding subsection (g). This added language clarifies the post-professional education requirements set forth in Section 2570.3(e)(1). The term "upper extremity" is used to identify a requirement for post-professional education required for hand therapy. This language specifies that the term "upper extremity" to refers to courses "related to hand, wrist and forearm", and further clarifies Section 2570.3.

Amend Section 4150 by adding subsection (j) to prevent potential conflicts of interest resulting from specified relationships between advanced practice applicants and their supervisor(s). Current regulations require that the applicant complete a specified number of supervised training hours to satisfy the requirements of Sections 4151, 4152, and 4153. This amendment prohibits specified relationships, or any other relationship, that could interfere with the supervisor's professional judgment and objectivity relating to evaluation of the applicant's training hours.

Amend Section 4151(a)(1) by requiring the applicant to complete a minimum of 30 contact hours of the required post-professional education include courses specific to the rehabilitation of the hand, wrist and forearm. This amendment further clarifies the proposed amendment to Section 4150(g).

Amend Section 4152.1(b)(2) by adding language to clarify that only occupational therapists who are approved by the Board in the area of physical agent modalities may administer medication by the use of a physical agent modality.

Amend Section 4152.1(2) by adding subsection (c) to prohibit all occupational therapists or occupational therapy assistants from administering medication by injection.

Amend Section 4153(b)(2) to replace the term "certified" with the term "approved" to make consistent throughout Article 6.

Amend Section 4154 by deleting subsection (b) that restricts post-professional training to be conducted in specified clinical facilities. The deletion of the current language eliminates these restrictions.

Amend Section 4154(b) by adding new language that requires post-professional training be supervised. Existing requirements contained of Sections 4154(1), requiring a written agreement outlining a plan of supervision and training remains unchanged. This section is also re-numbered for internal continuity.

Amend Section 4155 as follows:

- requires of submission of an application, as specified in section 4155(a)(1), (2), and (3) and replaces the term "portfolio" with the term "documentation";
- adding Sections 4155(a)(1), (2) and (3) to identify the application form that must be submitted, specific to the advanced practice area;
- adding language to Section 4155(b)(1) that clarifies the documentation required to prove the completion of post-professional education courses;
- adding language to Section 4155(b)(2) to specify that evidence of the number of contact hours completed is only required for courses that are not approved by the Board;
- adding language to Section 4155(b)(3) to specify that an outline or course syllabus is only required for courses that are non-Board approved;
- adding Section 4155(b)(4) requiring that the applicant submit detailed information concerning each course submitted with the advanced practice application form relating to the advanced practice area
- re-numbering Section 4155(a)(4) to Section 4155(a)(5) for internal continuity;
- delete Section 4155(a)(5) requiring applicants to submit a "statements of learning."

The new application forms referred to in the section 4155 are incorporated by reference and can be found as exhibits in the rule-making file and are available on the Board's website or upon request. The applications are: Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev. 10/09), Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev. 10/09), and the Application for Advanced Practice Approval in Swallowing (Form APS, Rev. 10/09).

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Non-discretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The Board has made an initial determination that the adoption of this regulation would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

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

Cost Impact on Representative Private Person or Business:

None. These amendments only relate to the applicants who apply for advanced practice approval and define and clarify the documentation required to submit to the Board for review and evaluation. There is no increased cost to the applicants.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The Board has determined that the proposed regulation would not impact small businesses because the regulations do not regulate, benefit or harm small businesses and do not require reports or any other compliance activities of small businesses.

CONSIDERATION OF ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

TEXT OF PROPOSAL AND INITIAL STATEMENT OF REASONS AND INFORMATION

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

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing, from our website as listed below, or upon written request from the contact person listed below.

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

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

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

CONTACT PERSON

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

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

The backup contact person is:

Heather Martin
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

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

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

The California Board of Occupational Therapy hereby amends its regulations in Division 39 of Title 16 of the California Code of Regulations. Changes to the originally proposed language are shown by underline for new text and strikeout for deleted text.

SPECIFIC LANGUAGE

§ 4150. Definitions

For the purpose of this article:
(a) "ACOTE" means the Accreditation Council for Occupational Therapy Education.
(b) "Post professional education and training" means education and training obtained subsequent to the qualifying degree program or beyond current ACOTE standards for the qualifying degree program.
(c) "Contact hour" means ~~fifty (50)~~ sixty (60) minutes of coursework or classroom instruction.
(d) "Semester unit" means fifteen (15) contact hours.
(e) "Quarter unit" means ten (10) contact hours.
(f) "Rehabilitation of the hand, wrist, and forearm" as used in Code section 2570.2(l) refers to occupational therapy services performed as a result of surgery or injury to the hand, wrist, or forearm.
(g) "Upper extremity" as used in Code section 2570.3(e) includes education relating to the hand, wrist, or forearm.
~~(g)~~ (h) "Swallowing" as used in Code section 2570.3 is the passage of food, liquid, or medication through the pharyngeal and esophageal phases of the swallowing process.
~~(h)~~ (i) "Instrumental evaluation" is the assessment of any aspect of swallowing using imaging studies that include, but are not limited to, endoscopy and videofluoroscopy.
(1) "Endoscopic evaluation of swallowing" or "endoscopy" is the process of observing structures and function of the swallowing mechanism to include the nasopharynx, oropharynx, and hypopharynx.
(2) "Videofluoroscopic swallowing study" or "videofluoroscopy" is the fluoroscopic recording and videotaping of the anatomy and physiology of the oral cavity, pharynx, and upper esophagus using a variety of bolus consistencies to assess swallowing function. This procedure may also be known as videofluorography, modified barium study, oral-pharyngeal motility study and videoradiography.

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

§ 4151. Hand Therapy

(a) Hand therapy services may be performed only when an occupational therapist has demonstrated to the Board 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 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) 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.

§ 4152.1. Use of Topical Medications

(a) ~~An occupational therapist who is approved by the Board to perform advanced practices in physical agent modalities may administer topical medications to a patient directly or via iontophoresis or phonophoresis.~~
~~(b)~~ (a) As used in this section, "topical medications" means medications applied locally to the skin or underlying tissue where such medications require a prescription or order under federal or state law. The following medications are applicable to the practice of occupational therapy and may be used by an occupational therapist:
(1) Bacteriocidal agents;
(2) Debriding agents;
(3) Topical anesthetic agents;
(4) Anti-inflammatory agents;
(5) Antispasmodic agents; and
(6) Adrenocortico-steroids.
~~(c)~~ (b) An occupational therapist shall apply or administer topical medications in accordance with this subsection.
(1) Any topical medication applied or administered shall have been ordered on a specific or standing basis by a practitioner legally authorized to order or prescribe such medication pursuant to Business and Professions Code section 2571(a).
(2) An occupational therapist may administer a topical medication by the use of a physical agent modality, only if the occupational therapist is approved by the Board in the advanced practice area of physical agent modalities.
~~(2)~~ (3) An occupational therapist shall follow written protocols in applying or administering topical medications. The protocols shall:
(A) Be prepared by the facility within which the topical medications are being applied or administered;
(B) Be approved by the medical director or equivalent of the facility;
(C) Include a description of each medication, its actions, its indications and contraindications, and the proper procedure and technique for application;
(D) Require that the administration be consistent with the manufacturer's guidelines for any equipment to be used in the administration of the topical medication; and

(E) Be based on research and evidence-based practice, pharmaceutical standards of practice and known desired outcomes.
~~(3)~~ (4) Supervision of the application or administration of topical medications by an occupational therapy assistant under this section shall be in accordance with Article 9.
(c) Under no circumstance does this section authorize an occupational therapist or occupational therapy assistant to administer a medication via injection.

NOTE: Authority cited: Sections ~~163.5~~ and 2570.20, Business and Professions Code. Reference: Section 2571, Business and Professions Code.

§ 4153. Swallowing Assessment, Evaluation, or Intervention

(a) The role of an occupational therapist in instrumental evaluations is to observe structure and function of the swallowing mechanism in order to assess swallowing capability and determine swallowing interventions. The occupational therapist may not perform the physically invasive components of the instrumental evaluation.
(b) Swallowing assessment, evaluation or intervention may be performed only when an occupational therapist has demonstrated to the Board 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 following subjects:
(A) Anatomy, physiology and neurophysiology of the head and neck with focus on the structure and function of the aerodigestive tract;
(B) The effect of pathology on the structures and functions of the aerodigestive tract including medical interventions and nutritional intake methods used with patients with swallowing problems;
(C) Interventions used to improve pharyngeal swallowing function.
(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to swallowing assessment, evaluation or intervention. An occupational therapist in the process of completing the training requirements of this section may practice swallowing assessment, evaluation or intervention under the supervision of an occupational therapist who has been ~~certified~~ approved under this article, a speech language pathologist with expertise in this area, or a physician and surgeon.
(c) An occupational therapist may provide only those swallowing assessment, evaluation or intervention 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.

§ 4154. Post Professional Education and Training

(a) Post professional education courses shall be obtained at any of the following:
(1) College or university degree programs accredited or approved by ACOTE;
(2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;

(3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;
(4) Any approved provider. To be approved by the Board the provider shall submit the following:
(A) A clear statement as to the relevance of the course to the advanced practice area.
(B) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
(D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or
(5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:
(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
~~(b) Post professional training shall be supervised and obtained at either of the following:~~
~~(1) Clinical facilities affiliated with such colleges and universities described in subsection (a) or~~
~~(2) Hospital or community based clinical training programs.~~
~~(c)~~ (b) Post professional training shall be supervised, ~~training as it is used in subsection (b) above~~ which means, at a minimum:
(1) The supervisor and occupational therapist have a written agreement, signed and dated by both parties prior to accruing the supervised experience, outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.
(2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.
(3) The supervisor does not have a co-habitative, familial, intimate, business or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or the violates the Ethical Standards of Practice.

~~(d)~~ (c) Post professional education and training must be completed within the five years immediately preceding application for certification in the advanced practice area.

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

§ 4155. Application for Approval in Advanced Practice Areas

In order to provide the advanced practice services set forth in Code section 2570.3(d), an occupational therapist shall apply for and receive approval from the Board.
(a) To apply for approval, an occupational therapist shall submit to the Board, an application as specified in subsections (1), (2) or (3), along with ~~a written portfolio~~ the required documentation ~~reflecting the requirements set forth in this article in the appropriate advanced practice area~~.
(1) Applicants seeking approval in the area of Hand Therapy shall submit the Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev 10/09);
(2) Applicants seeking approval in the use of physical agent modalities, shall submit the Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev 10/09);
(3) Applicants seeking approval in the area of Swallowing Assessment, Evaluation, or Intervention, shall submit the Application for Advanced Practice Approval in Swallowing (Form APS, Rev 10/09);
(b) The ~~portfolio~~ documentation must ~~contain~~ include the following:
(1) Documented proof of attendance and completion of each course (i.e., certificate of completion or transcript).
(2) Evidence of the number of contact hours completed for each course for courses that are not Board approved.
(3) Outline or syllabus of each course for courses that are not Board approved.
(4) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) as it relates to the advanced practice area.
~~(4)~~ (5) Resume or credentials of each instructor for courses that are not Board approved.
~~(5) Statement of Learning for each course. Such statement shall reflect what the occupational therapist learned, how that knowledge would be applied in his or her practice, how it changed his or her practice or validated it, and how the occupational therapist became more competent because of the course.~~
(6) Verification of completion of supervised on-the-job training, clinical internship or affiliation reflecting the nature of the training and the number of hours. Such verification must by signed by the supervisor(s) under penalty of perjury.
(c) An advanced practice application not completed within six months of receipt or notification of deficiency, whichever is later, shall be deemed abandoned.
(d) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

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: Advanced Practice

Sections Affected:
Title 16, Division 39, California Code of Regulations, Sections 4150, 4151, 4152.1, 4153, 4154 and 4155. Business and Professions Code, Division 2. Healing Arts, Chapter 5.6 Section 2570.2 and 2570.3.

SPECIFIC PURPOSE OF THE REGULATIONS:

Existing law, Business and Professions Code Division 2, Healing Arts, Chapter 5.6, Sections 2570 et. seq. delineates the requirements for the licensing and regulation of occupational therapy practice in the State of California. Advanced practice approval means that an occupational therapist has demonstrated to the California Board of Occupational Therapy that he or she has the knowledge, skill and ability to provide specialized treatment in the areas of hand therapy, physical agent modalities and swallowing assessment, evaluation and intervention.

The proposed regulatory action is intended to amend, establish, clarify, and simplify the requirements for occupational therapists to obtain Board approval to provide advanced practice services contained in Title 16, California Code of Regulations Sections 4150, 4151, 4152.1, 4153, 4154, and 4155.

FACTUAL BASIS/NECESSITY:

Proposed amendments to Section 4150 will:

- Changes the definition of an education "contact hour" from fifty (50) minutes to sixty (60) minutes to be consistent with the Board's continuing competency requirement, reflect industry standards, and avoid confusion;
- Establishes the meaning of "Upper Extremity" as used in Business and Professions Code Section 2570.3(e), and specifies the education pertaining to the hand, wrist, and forearm;

Proposed amendments to Section 4151 will:

- Establishes that within the forty five (45) contact hours of education required for hand therapy approval, thirty hours (30) hours must be specifically related to the hand, wrist and forearm. This will prelude a practitioner from completing all or a majority educational requirement in the area of the shoulder.

Proposed amendments to Section 4152(1) will:

- Deletes narrow and constrictive language regarding the administration of topical medications by striking specific references to iontphoresis and phonophoresis.

- Establishes that an occupational therapist may administer a topical medication by the use of a physical agent modality only if the practitioner is approved by the Board to use physical agent modalities, to clarify any potential practice issue.
- Clarifies that under no circumstance can an occupational therapist to administer a medication via injection, to clarify any potential practice issues.
- Provides renumbering of subsections for continuity;

Proposed amendment to Subsection 4153(b)(2) will replace the term "certified" with "approval" for consistency within this section.

Proposed amendment to Section 4154(b) will:

- expand the facilities where supervised on-the-job training may be obtained, rather than limit training to currently specified facilities;
- expand opportunities for advanced practice applicants to acquire supervised on-the-job training.
- add subsection 4154(b)(3) to further define post-professional supervised training to prohibit specified relationships that would interfere with the professional judgment and objectivity necessary for effective supervision;
- require that a written supervision agreement be signed and dated by both parties prior to accruing the supervised experience;
- clarify that a course syllabus and instructor's credential are only required for courses that are not pre-approved by the Board.

Proposed amendments to Section 4155 will:

- add language to subsection (a) to require the use of specified Advanced Practice Application Forms;
- clarify in subsection 4155(b)(1) the type of acceptable documentation to prove the attendance and completion of post-professional education courses;
- add Section 4155(b)(3) to specify the documentation for courses that are not Board approved;
- delete subsection 4155(b)(5) requiring the submission "Statements of Learning" as not necessary; this requirement does not demonstrate the applicant's competence;
- re-number existing subsection 4155(b)(4) to 4155(b)(5) for continuity;

UNDERLYING DATA:

The applications for Advanced Practice Approval, specifically: the Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev. 10/09); the Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev. 10/09); the Application for Advanced Practice Approval in Swallowing (Form APS, Rev. 10/09).

BUSINESS IMPACT:

This regulation will not have a significant adverse economic impact on business.

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.

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

Modified Text

Changes to the originally proposed language are shown by underline for new text and strikeout for deleted text. Proposed modified amendments are shown by double strikeout for deleted text and double underline for new text.

§ 4150. Definitions

For the purpose of this article:
(a) "ACOTE" means the Accreditation Council for Occupational Therapy Education.
(b) "Post professional education and training" means education and training obtained subsequent to the qualifying degree program or beyond current ACOTE standards for the qualifying degree program.
(c) "Contact hour" means ~~fifty (50)~~ sixty (60) minutes of coursework or classroom instruction.
(d) "Semester unit" means fifteen (15) contact hours.
(e) "Quarter unit" means ten (10) contact hours.
(f) "Rehabilitation of the hand, wrist, and forearm" as used in Code section 2570.2(l) refers to occupational therapy services performed as a result of surgery or injury to the hand, wrist, or forearm.
(g) "Upper extremity" as used in Code section 2570.3(e) includes education relating to the hand, wrist, or forearm.
~~(g)~~ (h) "Swallowing" as used in Code section 2570.3 is the passage of food, liquid, or medication through the pharyngeal and esophageal phases of the swallowing process.
~~(h)~~ (i) "Instrumental evaluation" is the assessment of any aspect of swallowing using imaging studies that include, but are not limited to, endoscopy and videofluoroscopy.
(1) "Endoscopic evaluation of swallowing" or "endoscopy" is the process of observing structures and function of the swallowing mechanism to include the nasopharynx, oropharynx, and hypopharynx.
(2) "Videofluoroscopic swallowing study" or "videofluoroscopy" is the fluoroscopic recording and videotaping of the anatomy and physiology of the oral cavity, pharynx, and upper esophagus using a variety of bolus consistencies to assess swallowing function. This procedure may also be known as videofluorography, modified barium study, oral-pharyngeal motility study and videoradiography.

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

§ 4151. Hand Therapy

(a) Hand therapy services may be performed only when an occupational therapist has demonstrated to the Board 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 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) 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.

§ 4152.1. Use of Topical Medications

(a) ~~An occupational therapist who is approved by the Board to perform advanced practices in physical agent modalities may administer topical medications to a patient directly or via iontophoresis or phonophoresis.~~
~~(b)~~ (a) As used in this section, "topical medications" means medications applied locally to the skin or underlying tissue where such medications require a prescription or order under federal or state law. The following medications are applicable to the practice of occupational therapy and may be used by an occupational therapist:
(1) Bacteriocidal agents;
(2) Debriding agents;
(3) Topical anesthetic agents;
(4) Anti-inflammatory agents;
(5) Antispasmodic agents; and
(6) Adrenocortico-steroids.
~~(c)~~ (b) An occupational therapist shall apply or administer topical medications in accordance with this subsection.
(1) Any topical medication applied or administered shall have been ordered on a specific or standing basis by a practitioner legally authorized to order or prescribe such medication pursuant to Business and Professions Code section 2571(a).
(2) An occupational therapist may administer a topical medication by the use of a physical agent modality, only if the occupational therapist is approved by the Board in the advanced practice area of physical agent modalities.
~~(2)~~ (3) An occupational therapist shall follow written protocols in applying or administering topical medications. The protocols shall:
(A) Be prepared by the facility within which the topical medications are being applied or administered;
(B) Be approved by the medical director or equivalent of the facility;
(C) Include a description of each medication, its actions, its indications and contraindications, and the proper procedure and technique for application;
(D) Require that the administration be consistent with the manufacturer's guidelines for any equipment to be used in the administration of the topical medication; and
(E) Be based on research and evidence-based practice, pharmaceutical standards of practice and known desired outcomes.
~~(3)~~ (4) Supervision of the application or administration of topical medications by an occupational therapy assistant under this section shall be in accordance with Article 9.

(c) Under no circumstance does this section authorize an occupational therapist or occupational therapy assistant to administer a medication via injection.

NOTE: Authority cited: Sections ~~163.5~~ and 2570.20, Business and Professions Code. Reference: Section 2571, Business and Professions Code.

§ 4153. Swallowing Assessment, Evaluation, or Intervention

(a) The role of an occupational therapist in instrumental evaluations is to observe structure and function of the swallowing mechanism in order to assess swallowing capability and determine swallowing interventions. The occupational therapist may not perform the physically invasive components of the instrumental evaluation.
(b) Swallowing assessment, evaluation or intervention may be performed only when an occupational therapist has demonstrated to the Board 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 following subjects:
(A) Anatomy, physiology and neurophysiology of the head and neck with focus on the structure and function of the aerodigestive tract;
(B) The effect of pathology on the structures and functions of the aerodigestive tract including medical interventions and nutritional intake methods used with patients with swallowing problems;
(C) Interventions used to improve pharyngeal swallowing function.
(2) Training: Completion of 240 hours of supervised on-the-job training, clinical internship or affiliation, which may be paid or voluntary, pertaining to swallowing assessment, evaluation or intervention. An occupational therapist in the process of completing the training requirements of this section may practice swallowing assessment, evaluation or intervention under the supervision of an occupational therapist who has been ~~certified~~ approved under this article, a speech language pathologist with expertise in this area, or a physician and surgeon.
(c) An occupational therapist may provide only those swallowing assessment, evaluation or intervention 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.

§ 4154. Post Professional Education and Training

(a) Post professional education courses shall be obtained at any of the following:
(1) College or university degree programs accredited or approved by ACOTE;
(2) College or university degree programs accredited or approved by the Commission on Accreditation in Physical Therapy Education;
(3) Colleges or universities with Speech and Hearing Programs accredited or approved by the Council on Academic Accreditation in Audiology and Speech-Language Pathology;
(4) Any approved provider. To be approved by the Board the provider shall submit the following:
(A) A clear statement as to the relevance of the course to the advanced practice area.
(B) Information describing, in detail, the depth and breadth of the content covered (e.g.,

a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(C) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
(D) Information that shows the course provider's qualifications to offer the type of course being offered (e.g., the provider's background, history, experience, and similar courses previously offered by the provider), particularly as it relates to the advanced practice area; or
(5) A provider that has not been approved by the Board, if the applicant occupational therapist demonstrates that the course content meets the subject matter requirements set forth in sections 2570.3(e) or 2570.3(f) of the Code, or section 4153 of these regulations, and submits the following:
(A) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) particularly as it relates to the advanced practice area.
(B) Information that shows the course instructor's qualifications to teach the content being taught (e.g., his or her education, training, experience, scope of practice, licenses held, and length of experience and expertise in the relevant subject matter), particularly as it relates to the advanced practice area.
~~(b) Post professional training shall be supervised and obtained at either of the following:~~
~~(1) Clinical facilities affiliated with such colleges and universities described in subsection (a) or~~
~~(2) Hospital or community based clinical training programs.~~
~~(c)~~ (b) Post professional training shall be supervised, ~~training as it is used in subsection (b) above~~ which means, at a minimum:
(1) The supervisor and occupational therapist have a written agreement, signed and dated by both parties prior to accruing the supervised experience, outlining the plan of supervision and training in the advanced practice area. The level of supervision is determined by the supervisor whose responsibility it is to ensure that the amount, degree, and pattern of supervision is consistent with the knowledge, skill and ability of the occupational therapist, and appropriate for the complexity of client needs and number of clients for whom the occupational therapist is providing advanced practice services.
(2) The supervisor is readily available in person or by telecommunication to the occupational therapist while the therapist is providing advanced practice services.
(3) The supervisor does not have a co-habitative, familial, intimate, business, excluding employment relations, or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or ~~the~~ that violates the Ethical Standards of Practice.
~~(d)~~ (c) Post professional education and training must be completed within the five years immediately preceding application for certification in the advanced practice area.

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

§ 4155. Application for Approval in Advanced Practice Areas

In order to provide the advanced practice services set forth in Code section 2570.3(d), an occupational therapist shall apply for and receive approval from the Board.
(a) To apply for approval, an occupational therapist shall submit to the Board, an application as specified in subsections (1), (2) or (3), along with ~~a written portfolio~~ the required documentation ~~reflecting the requirements set forth in this article in the appropriate advanced practice area~~.
(1) Applicants seeking approval in the area of Hand Therapy shall submit the Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev 10/09);
(2) Applicants seeking approval in the use of physical agent modalities, shall submit the Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev 10/09);
(3) Applicants seeking approval in the area of Swallowing Assessment, Evaluation, or Intervention, shall submit the Application for Advanced Practice Approval in Swallowing (Form APS, Rev 10/09);
(b) The ~~portfolio~~ documentation must ~~contain~~ include the following:
(1) Documented proof of attendance and completion of each course (i.e., certificate of completion or transcript).
(2) Evidence of the number of contact hours completed for each course for courses that are not Board approved.
(3) Outline or syllabus of each course for courses that are not Board approved.
(4) Information describing, in detail, the depth and breadth of the content covered (e.g., a course syllabus and the goals and objectives of the course) as it relates to the advanced practice area.
~~(4)~~ (5) Resume or credentials of each instructor for courses that are not Board approved.
~~(5) Statement of Learning for each course. Such statement shall reflect what the occupational therapist learned, how that knowledge would be applied in his or her practice, how it changed his or her practice or validated it, and how the occupational therapist became more competent because of the course.~~
(6) Verification of completion of supervised on-the-job training, clinical internship or affiliation reflecting the nature of the training and the number of hours. Such verification must by signed by the supervisor(s) under penalty of perjury.
(c) An advanced practice application not completed within six months of receipt or notification of deficiency, whichever is later, shall be deemed abandoned.
(d) An application submitted subsequent to the abandonment of a previous application shall be treated as a new application.

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

January 20, 2010

California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, California 95815

Dear California Board of Occupational Therapy,

Thank you for the opportunity to provide written comments regarding the proposed advanced practice regulation changes. The Occupational Therapy Association of California (OTAC) supports the changes in language with the exception of one item related to advanced practice supervision on page 4 of the proposed text, which currently reads:

> (3) The supervisor does not have a co-habitative, familial, intimate, **business** or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or the violates the Ethical Standards of Practice.

In a small occupational therapy private practice or in a facility where there are a limited number of occupational therapy practitioners that have advanced practice approval, we are concerned that the issue of a "business" relationship could be misinterpreted and could limit the availability of qualified persons with advanced practice approval to provide the necessary supervision for those seeking advanced practice approval.

OTAC further believes that "co-habilitative, familial, intimate, or other relationship that could interfere with professional judgment and objectivity" sufficiently covers the range of potential challenges with professional objectivity and that the word "business" could be struck from the proposed regulatory language without negatively affecting the intent of the proposed regulations.

Thank you for providing the Occupational Therapy Association of California with the opportunity to provide written comments on the proposed advanced practice regulations. Feel free to contact me should you have any questions.

Sincerely,

Shawn Phipps, MS, OTR/L
President
Occupational Therapy Association of California
pres@otaconline.org

Date: December 29, 2009

To: Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815

Re: Proposed Rulemaking section 4150

1) typo last line page 4 change the to that
2) Question regarding business relationship 4154. 5 B 3.

Does this imply that as a supervisor or manager you may not supervise an applicant because you have an interest in the completion of the advanced practice to provide that service with fewer restrictions in your organization? If so I would not support this regulation. Also staff who are approved by the board at a facility, and are then requested to supervised applicants may interpret this as a conflict.

Thanks you for your time.

In addition I think the new forms should better facilitate documentation of learning.

Good work,

Luella Grangaard, MS, OTR, CHT
PO Box 832
Morongo Valley, CA
92256

12/29/09 - Licensure Board - if worded this way, it may preclude me from giving (eg) insulin injections to a family member or pet. Margaret Phillips, MS, OTR/L, CHT 218 El Camino Sobrante Valley, CA 94066

- Establishes that an occupational therapist may administer a topical medication by the use of a physical agent modality only if the practitioner is approved by the Board to use physical agent modalities, to clarify any potential practice issue.
- Clarifies that under no circumstance can an occupational therapist to administer a medication via injection, to clarify any potential practice issues.
- Provides renumbering of subsections for continuity;

Proposed amendment to Subsection 4153(b)(2) will replace the term "certified" with "approval" for consistency within this section.

Proposed amendment to Section 4154(b) will:

- expand the facilities where supervised on-the-job training may be obtained, rather than limit training to currently specified facilities;
- expand opportunities for advanced practice applicants to acquire supervised on-the-job training.
- add subsection 4154(b)(3) to further define post-professional supervised training to prohibit specified relationships that would interfere with the professional judgment and objectivity necessary for effective supervision;
- require that a written supervision agreement be signed and dated by both parties prior to accruing the supervised experience;
- clarify that a course syllabus and instructor's credential are only required for courses that are not pre-approved by the Board.

Proposed amendments to Section 4155 will:

- add language to subsection (a) to require the use of specified Advanced Practice Application Forms;
- clarify in subsection 4155(b)(1) the type of acceptable documentation to prove the attendance and completion of post-professional education courses;
- add Section 4155(b)(3) to specify the documentation for courses that are not Board approved;
- delete subsection 4155(b)(5) requiring the submission "Statements of Learning" as not necessary; this requirement does not demonstrate the applicant's competence;
- re-number existing subsection 4155(b)(4) to 4155(b)(5) for continuity;

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UNDERLYING DATA:

The applications for Advanced Practice Approval, specifically: the Application for Advanced Practice Approval in Hand Therapy (Form APH, Rev. 10/09); the Application for Advanced Practice Approval in Physical Agent Modalities (Form APP, Rev. 10/09); the Application for Advanced Practice Approval in Swallowing (Form APS, Rev. 10/09).

"Bolding, Deborah J" <DBolding@stanfordmed.org>

10/15/2009 05:39 PM

To James_schenk@dca.ca.gov

cc

bcc

Subject FW: CA Board of OT changes

Hi, Jim,

Thanks for answering my questions this afternoon. Here is a copy of my comments.

Debby Bolding, MS, OTR/L
Manager of Professional Development
Rehabilitation and Respiratory Care Services
650-498-7812
dbolding@stanfordmed.org
www.rehabstudents.stanfordhospital.com

Jim Schenk
California Board of Occupational Therapy
2005 Evergreen Street, Suite 2050
Sacramento, CA 95815
(916) 263-2294
(916) 263-2701 (FAX)
cbot@dca.ca.gov

Dear Mr. Schenk:

I have a question regarding the changes to the following section of the CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
Title 16, Division 39, California Code of Regulations, Section 4154. The section states:

"(3) The supervisor does not have a co-habitative, familial, intimate, business or other relationship that could interfere with professional judgment and objectivity necessary for effective supervision, or the violates the Ethical Standards of Practice."

I'm assuming that a normal supervisory relationship, where more experienced therapists supervise a colleague or subordinate who work with them, would not be affected by this provision, but it wasn't completely clear whether or not a "business relationship" where one person is an employee would be excluded by this provision. Since many people get "on the job training", I think this should be clear in the regulations.

I have strong reservations about the following suggested change to § 4152.1. Use of Topical Medications:

(2) An occupational therapist may administer a topical medication by the use of a physical agent modality, only if the occupational therapist is approved by the Board in the advanced practice area of physical agent modalities.

This change appears to EXCLUDE therapists who are working on advanced skills in a supervisory relationship from obtaining practice hours in iontophoresis and phonopheresis. These are the very skills we want them to learn under supervision. This change would mean therapists working on an advanced certificate in modalities could practice ultrasound, biofeedback and e-stimulation under the supervision of a therapist, BUT not iontophoresis and phonophoresis. Yet as soon as the therapist obtains approval in

modalities, they would be able to use them WITHOUT supervision. This section needs to be reworded to permit therapists working to obtain approval in modalities to practice using topical medications under supervision.

I appreciate the opportunity for public comment about these changes.

Debby Bolding, MS, OTR/L
Manager of Professional Development
Rehabilitation and Respiratory Care Services
650-498-7812
dbolding@stanfordmed.org
www.rehabstudents.stanfordhospital.com